

**ILLINOIS STATE POLICE MERIT BOARD  
OF THE STATE OF ILLINOIS**

**IN RE THE MATTER OF:**

**TROOPER CRAIG MIHALJEVICH  
I.D. # 4636**

**[REDACTED]**

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**Illinois State Police Merit Board  
Docket No. 15 - 06**

**DECISION**

THIS CAUSE comes before the Merit Board on a seven-count *Complaint* filed by Leo P. Schmitz, Director of the Illinois State Police, following a full hearing before duly appointed Merit Board Hearing Officer, Edward W. Williams.

**FINDINGS OF FACT**

The Merit Board, having reviewed the charges filed, the testimony and evidence submitted, the Briefs of Counsel, the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law*, the Department's *Arguments in Response to Recommended Findings of Fact and Conclusions of Law*, and the *Hearing Officer's Reply to the Department's Response to the Recommended Findings of Fact and Conclusions of Law*, finds as follows:

On March 24, 2014, Illinois State Trooper Craig Mihaljevich was off-duty and drove his wife Monica Escobar to school. (Tr. 16). After dropping off Escobar, Mihaljevich noticed that she had left her phone in the car. (Tr. 16). He saw messages on Escobar's phone from another man, Trooper Jason Czub. (Tr. 16-17). Mihaljevich then used Escobar's phone to contact Czub without identifying himself. (Tr. 18, 217). Czub received messages from the contact listed as "Monica" through the WhatsApp application on his phone. (Tr. 118, 122). The text messages instructed Czub to come to Escobar's house, let himself in the unlocked front door, and undress. (Tr. 122, 192, 206, 207, 217, 218, 219).

Czub arrived at the home of Mihaljevich and Escobar. (Tr. 123). The front door was unlocked. (Tr. 29, 124). Czub entered the house, proceeded upstairs, and took off his clothes. (Tr. 124-25). Mihaljevich was downstairs and heard a person enter the house. (Tr. 29). Mihaljevich did not indicate he was home, call out for the person, call 911, or call anyone for help. (Tr. 29-30). Less than five minutes after Czub entered the residence, Mihaljevich grabbed his duty belt, proceeded upstairs to the main level, and unholstered his weapon. (Tr. 31, 446-47). Mihaljevich approached Czub with his firearm drawn and instructed him to freeze (Tr. 127, 455). Mihaljevich proceeded up the stairs towards the bedrooms with his firearm drawn. (Tr. 126, 455). Czub verbally identified himself as a State Police Trooper, but could not produce any form of identification. (Tr. 127, 454). Mihaljevich handcuffed Czub and walked him down to the living room. (Tr. 127, 456). Mihaljevich then called his neighbor, off-duty Chicago Police Officer Robert Eigenbauer. (Tr. 67, 131, 456). Eigenbauer arrived at Mihaljevich's home and found Czub handcuffed and naked in the center of the living room. (Tr. 68). Eigenbauer then briefly questioned Czub about his identity and why he was at Mihaljevich's house. (Tr. 70-72, 462-63). Mihaljevich then called 911 at Eigenbauer's direction. (Tr. 40, 72, 460).

Chicago Police Officers John McGovern and Michael Kulbida responded to Mihaljevich's house. (Tr. 190, 205). McGovern and Kulbida observed Czub handcuffed and naked inside the house. (Tr. 191, 205). McGovern unhandcuffed Czub and gave him his clothes. (Tr. 211). Officer Kulbida learned from Czub and Mihaljevich that Czub had been "lured into the residence through text messages that were sent to the phone." (Tr. 206). Mihaljevich told Officer Kulbida that "he told the state trooper to -- told Jason to come to the residence. The front door will be open. Once you get inside get naked, put your clothes on the kitchen table and I'll have a surprise for you when I come downstairs." (Tr. 207).

Chicago Police Sergeant Gabriel Flores also arrived at Mihaljevich's house after responding to a call to assist an officer for a person who had broken into his house and disrobed. (Tr. 216). After arriving Sergeant Flores proceeded to the kitchen area where the officers on scene were speaking to Mihaljevich. (Tr. 218). Mihaljevich told Sergeant Flores that "he had been sending text messages to another person, the person in the living room." (Tr. 217, 224-26). "Those text messages were in reference to, you know, coming over to the house and letting himself into the kitchen," and "once he was in the kitchen, he sent him a text telling him to disrobe." (Tr. 217-18).

Mihaljevich told Officer McGovern that he wanted Czub arrested for breaking and entering. (Tr. 192). Officer McGovern and Sergeant Flores discussed the situation, and although Mihaljevich wanted Czub arrested, Sergeant Flores came to the conclusion that Czub had not intentionally broken into the house. (Tr. 218). Rather, Sergeant Flores determined that Czub had been "lured into the house by the homeowner by sending the text messages to him." (Tr. 218).

On March 5, 2015, Mihaljevich was the subject of an administrative interview conducted by Illinois State Police Special Agent Genelle Jones and Illinois State Police Master Sergeant Jason Holt. (Dept. Ex. 1). During the administrative interview, Mihaljevich was admonished that he was required to truthfully answer questions. (Dept. Ex. 1). During his administrative interview, Mihaljevich stated that he did not send a text message to Jason Czub from his wife's phone instructing him to enter the house. (Dept. Ex. 1, p. 12, 22, 27, 28). Mihaljevich also stated that he did not tell Chicago Police Officers that he sent a text message from his wife's phone to Czub instructing him to enter the house and take his clothes off. (Dept. Ex. 1, p. 28, 32).

### DETERMINATION OF CHARGES

The Merit Board finds proven by a preponderance of the evidence the violations of the Department's Rules of Conduct (ROC) by Trooper Mihaljevich as alleged in Counts I through VII of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Mihaljevich:

(a) violated ROC-002, Paragraph III.A.1, in that he committed the offense of Aggravated Unlawful Restraint in violation of 720 ILCS 5/10-3.1(a), a Class 3 felony, when he invited Jason Czub to come to his residence under false pretenses, to enter through an unlocked front door and get undressed, then knowingly detained him without legal authority while using a deadly weapon in that he held Czub at gunpoint and handcuffed him;

(b) violated ROC-002, Paragraph III.A.37, in that he made false accusations of a misdemeanor and withheld information from investigating officers when he called 911 to report an intruder in his house and told Chicago Police Officers he wanted to sign a criminal complaint against Jason Czub and have him arrested for breaking and entering, after inviting him into the house by text message from his wife's phone;

(c) violated ROC -002, Paragraph III.A.41.c, in that he failed to truthfully answer questions in a Department of State Police personnel investigation administrative interview when he made the following statements:

- (1) When he denied sending a text message from his wife's phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;



(2) When he denied telling Chicago Police he sent a text message from his wife's phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;

(d) violated ROC-002, Paragraph III.A.43, in that he used more force than reasonably necessary under the circumstances and the force used was not in accordance with law and Departmental procedures, when he drew his weapon, handcuffed, and detained Jason Czub after Czub responded to Trooper Mihaljevich's written text messages to enter the residence through an unlocked door and undress;

(e) violated ROC-002, Paragraphs III.A.43, in that he made an arrest or seizure he knew or should have known was not in accordance with law and Department procedures, when he detained Jason Czub;

(f) violated ROC-002, Paragraphs III.A.8, in that he failed to maintain a level of conduct in keeping with the highest standards of the law enforcement profession, and engaged in conduct that caused the Department to be brought into disrepute, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, saying there was a naked man in custody in his house. Chicago Police officers responded and Trooper Mihaljevich attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence; and

(g) violated ROC-002, Paragraph III.A.7, in that he failed to conduct himself while off-duty in such a manner as to reflect favorably on the Department and engaged in conduct that discredited the integrity of the Department, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, saying there was a naked man in custody in his house. Chicago Police Officers responded and

Trooper Mihaljevich attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.

#### **CONSIDERATION OF MITIGATING AND AGGRAVATING FACTORS**

In making its determination of the appropriate level of discipline, the Merit Board considered all mitigating and aggravating factors presented by the Mihaljevich and the Department, including, but not limited to, the following:

Trooper Mihaljevich offered as mitigation six prior incidents of discipline issued to Illinois State Police Officers. The Merit Board has reviewed and considered each of these cases, and finds that none of the offered cases are of a wholly similar type or degree of misconduct. While each of these individual cases involves some type of misconduct found in the present case, no case offered includes the same type, amount, and severity of misconduct presently before the Merit Board.

The Merit Board considered the testimony and evidence offered by Mihaljevich concerning his lack of disciplinary history and work record.

The Merit Board considered the disciplinary action imposed on Trooper Czub related to this incident. Czub misused his state squad car, state-issued mobile data computer, and brought the Department into disrepute, resulting in a five-day suspension. While the misconduct of Mihaljevich and Czub occurred at the same time and place, the type and severity of misconduct is entirely different. Mihaljevich lured Czub to his residence where he unlawfully detained Czub with his weapon and handcuffs, falsely reported Czub as an intruder in his home, was untruthful about his conduct, and brought the Department into disrepute. Mihaljevich and Czub cannot be said to have the same intent or purpose in their misconduct, as Czub was the victim of, and not a partner in, Mihaljevich's misconduct.

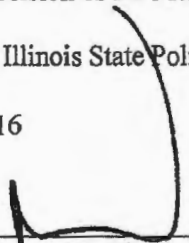
Mihaljevich also argued he was a victim of circumstance after he was upset by the revelation of his wife's affair and the presence of a naked Czub in his house. The Merit Board rejects this argument. Mihaljevich, upon discovering messages on his wife's cell phone, took deliberate and purposeful action to lure Czub to his home and confront him. Mihaljevich initiated the course of events that brought Czub to his house and caused him to disrobe. Any circumstance that exacerbated Mihaljevich's behavior was of his own creation.

The Merit Board finds the evidence offered in mitigation does not overcome the evidence which forms the basis for discipline.

#### PENALTY

The entirety of the evidence presented shows Trooper Mihaljevich's continuance as an officer with the Illinois State Police would be detrimental to the discipline and efficiency of the Department. It is, therefore, the unanimous decision of the Merit Board to terminate Trooper Craig Mihaljevich from employment with the Illinois State Police.

Dated this 1st day of November, 2016

  
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Reeve Waud, Chairman  
State Police Merit Board, State of Illinois

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STATE OF ILLINOIS  
ILLINOIS STATE POLICE MERIT BOARD

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ILLINOIS STATE POLICE  
MERIT BOARD

IN THE MATTER OF:

TROOPER CRAIG MIHALJEVICH  
I.D. No. 4636

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) Docket No.: 15-6  
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RECOMMENDED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

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## **I. BACKGROUND**

### **A. Pleadings**

On May 15, 2015, Leo P. Schmitz, Director of the Illinois State Police (ISP) filed a Complaint with the Illinois State Police Merit Board. The Complaint contains seven counts of alleged violations against Craig Mihaljevich (Respondent). Director Schmitz requested the Illinois State Police Merit Board conduct a hearing and terminate Respondent from his employment with the Illinois State Police.

Some of the allegations of the Complaint arise from Respondents conduct when he invited Jason Czub into his residence under false pretenses and detained him without legal authority and using excessive force. Additional allegations contained in the Complaint arise from Respondent making false accusations, withholding information from Chicago Police Officers, and failing to truthfully answer questions during an administrative interview.

**Count I Aggravated Unlawful Restraint:** The Complaint alleges that Respondent violated Departmental Directive ROC-002, Rules of Conduct, Paragraph III.A.1, which requires officers to uphold the Constitution of the United States and the State of Illinois. Specifically, the Complaint alleges that Respondent committed the offense of Aggravated Unlawful Restraint in violation of 720 ILCS 5/10-3.1 (a), a Class 3 felony, when he invited Jason Czub to his residence under false pretenses, told Czub to enter through an unlocked front door and get undressed, then knowingly detained him without legal authority while using a deadly weapon in that he held Czub at gunpoint and handcuffed him.

**Count II False Accusations of a Misdemeanor:** The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.37, which forbids officers from making false accusations of an offense or withholding information. Specifically, the Complaint alleges that Respondent made false accusations of a misdemeanor and withheld information from

investigating officers when he told Chicago Police Officers he wanted to sign a criminal complaint against Czub and have him arrested for breaking and entering.

**Count III Failure to Truthfully Answer Questions in an Administrative Interview:**

The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.41.c, which requires that officers truthfully answer questions from the competent authority in a Department personnel investigation. Specifically, the Complaint alleges Respondent failed to truthfully answer questions in a Department personnel investigation, when he was the subject of the investigation and was advised of his statutory administrative proceedings rights.

Respondent was untruthful during his administrative interview when he made one or more of the following statements:

- (a) when he denied sending a text message from his wife's phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;
- (b) when he denied telling Chicago Police he sent a text message from his wife's phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;
- (c) when he denied leaving a note which instructed the subject (Jason Czub) to remove his clothing;
- (d) when he denied telling Chicago Police he observed Jason Czub arrive at his residence in Czub's state issued squad car; and/or
- (e) when he denied apologizing to Chicago Police for calling 911 under false pretenses.

**Count IV Use of Excessive Force:** The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.43, which requires that officers not use more force in any situation than is reasonably necessary under the circumstances. Specifically, the Complaint alleges that Respondent used more force than reasonably necessary under the circumstances and the force used was not in accordance with law and Departmental procedures, when he drew his weapon, handcuffed and detained Jason Czub after Czub responded to Respondent's written message(s) to enter the residence through an unlocked door and undress.



**Count V Unlawful Arrest or Seizure:** The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.44, which requires officers to make arrests in accordance with law and Department procedures. Specifically, the Complaint alleges that Respondent made an arrest or seizure he knew or should have known was not in accordance with law and Department procedures, when he detained Jason Czub.

**Count VI Bringing the Department into Disrepute:** The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.8, which requires that officers maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Specifically, the Complaint alleges that Respondent failed to maintain a level of conduct in keeping with the highest standards of the law enforcement profession, and engaged in conduct that caused the Department to be brought into disrepute, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, reporting a naked man in custody in his house. Chicago Police Officers responded and Respondent attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.

**Count VII Conduct Unbecoming an Officer:** The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.7, which requires officers to conduct themselves at all times in such a manner as to reflect favorably on the Department. Specifically, the Complaint alleges that the Respondent failed to conduct himself while off duty in such a manner as to reflect favorably on the Department, and engaged in conduct that discredited the integrity of the Department, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, saying there was a naked man in custody in his house. Chicago Police Officers responded and Respondent attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.



## **B. Hearing Procedural Issues**

The Complaint in this case was filed May 15, 2015. Respondent was represented by Guy Studach. The Director of the Illinois State Police was represented by Assistant Attorney General Jessica R. Durkin and by Assistant Attorney General Roberto Martell Jr.

On July 20, 2015, Respondent filed a Motion for In Camera Inspection, requesting the Hearing Officer to review documents being withheld by ISP to determine if privilege applied. The Hearing Officer reviewed the documents and entered an Order on August 5, 2015 granting Respondent's request to review the 18 identified emails.

On October 26, 2015, the parties had reported they had reached a settlement and the matter was taken off call pending the Merit Board's acceptance of a Joint Stipulation. On January 08, 2016, The merit Board remanded the matter back to the Hearing Officer with instructions to have a hearing in this matter.

The hearing in this case was held on April 4, and 5, 2016. Testimonial and documentary evidence was presented during the hearing. During the hearing, the Director of the Illinois State Police was represented by Assistant Attorney Generals Jessica R. Durkin and Roberto Martell Jr. Attorney Guy Studach continued to represent Respondent. Following the close of the evidence at the hearing on April 5, 2016, a briefing schedule was established for simultaneous written closing arguments to be filed by May 23, 2016.

## **II. HEARING TESTIMONY**

### **A. List of Witnesses**

The following witnesses testified at the hearing in this case. The page number of the transcript of the proceedings upon which the testimony of the witness starts is included in parentheses.

*April 4, 2016*

1. Craig Mihaljevich (14-66)

2. Robert K. Eigenbauer (66-112)
3. Jason Czub (112-188)
4. John McGovern (189-203)
5. Michael Kulbida (203-214)
6. Gabriel Flores (215-230)
7. Genelle Jones (231-272)

*April 5, 2016*

8. Deborah Simental (274-363)
9. Michael Witt (382-393)
10. Michael Kraft (394-404)
11. Angelo Mollo (405-415)
12. Anthony Lupo (416-426)
13. Sherise Gipson (427-434)
14. Craig Mihaljevich (435-520)

**B. List of Exhibits**

The following exhibits were admitted into evidence in this case:

Petitioner's Exhibits

- |                        |   |
|------------------------|---|
| Petitioner's Exhibit 1 | ISP Investigative Report dated March 17, 2014 |
| Petitioner's Exhibit 2 | Audio of Mihaljevich call to 911 Operator     |

Respondent's Exhibits

- |                        |   |
|------------------------|---|
| Respondent's Exhibit 1 | ISP Negotiated Official Disciplinary Action Report dated September 30, 2014 |
| Respondent's Exhibit 2 | ISP Report on Changes for Mihaljevich dated March 2, 2015                   |
| Respondent's Exhibit 5 | ISP Official Disciplinary Action Report dated May 12, 1992                  |
| Respondent's Exhibit 6 | ISP Summary Sheet: Promotional Skills Evaluation                            |

dated August 9, 2005

Respondent's Exhibit 8

Three photographs of stairway area of incident

### **C. Background Summary**

Respondent is employed as a State Police Officer by ISP and holds the rank of Trooper. Respondent is married to Monica Escobar-Fernandez, and they reside at 6242 South Mason Avenue, Chicago, Illinois. On March 24, 2014, at approximately 8:00 a.m. Respondent dropped his wife off at her workplace. After doing so, without her knowledge, Respondent used his wife's cell phone to send one or more text messages to a male subject who had sent Escobar-Fernandez text messages of a sexual nature. The text message(s) Respondent sent pretended to be from Escobar-Fernandez, stated that the Respondent would not be at home and invited the male subject to the marital residence. The preceding facts are uncontested. The Department alleges that Respondent further instructed the man to come into the residence through the front door which would be unlocked, follow the instructions and get undressed. The Respondent denies that he ever invited the then unknown male to come into the residence or to get undressed.

The man who texted Respondent's wife was Jason Czub, with whom Escobar-Fernandez had been having a sexual relationship for several months, unbeknownst to Respondent. Czub is also an ISP Trooper, and works as a K-9 officer in District 15, the Illinois Tollway. Czub acted upon the text messages he received and went to Respondent's residence while off-duty in his state-issued K-9 equipped Tahoe, expecting to meet Escobar-Fernandez. Czub alleges that he went to the front door and found it unlocked as the text messages indicated. He went inside and in the upstairs hallway near the bedrooms found a note on a chair which instructed him to get undressed and place his clothes on the chair. Czub did so. The Respondent denies that he instructed Czub via either text message or note to do these actions.

Now naked, Czub observed Respondent at the base of the stairs wearing a duty belt and pointing a handgun at him. Respondent ordered Czub to put his hands on his head and get on his

knees. Czub repeatedly yelled out that he was a state trooper, and complied with Respondent's orders. As Czub was kneeling naked in the hallway with his hands on his head, Respondent approached Czub with his gun drawn and advised Czub he was going to place him in handcuffs. Czub complied and Respondent handcuffed Czub behind Czub's back.

Respondent retrieved Czub's cell phone from Czub's clothes on the chair, and compared the text messages on Czub's phone with those on his wife's phone. Respondent then used his own cell phone to call his next door neighbor, Robert Eigenbauer, an off-duty Chicago police officer. Eigenbauer came to Respondent's residence within minutes, and observed that Respondent had a naked man kneeling and handcuffed in the hallway. Eigenbauer questioned Czub as to his relationship with Escobar-Fernandez. Both Eigenbauer and the Respondent inquired of Czub as to his identity but Czub did not have any identification in his clothing, including his state-issued police identification. Eigenbauer told Respondent to call 911. Respondent called 911 to request assistance at 9:51 a.m., and reported he had a naked man in custody at his residence. Respondent identified himself as an ISP officer and noted that another off-duty officer was present and the scene was secure.

Sergeant Gabriel Flores and Officer James McGovern of the Chicago Police Department responded at 9:53 a.m. to the dispatch of a naked man breaking and entering into the residence of a state police officer at 6242 South Mason Avenue. Two other Chicago police officers also arrived on scene. Sergeant Flores interviewed Respondent. Officer McGovern took Czub into the living room for questioning, removed the handcuffs and allowed him to get dressed.

Respondent initially advised he wanted Czub arrested for breaking and entering into his residence, and that he wanted to sign complaints against Czub. Based upon the information Sergeant Flores developed at the scene, he decided not to make any arrests and requested the Illinois State Police handle the matter administratively.



## **D. Summary of Relevant Testimony**

### ***WITNESSES***

The following is a brief review of the evidence admitted in this case. This review does not include a recitation of all of the evidence presented in the case and is not intended to be an all-inclusive summary of the evidence. Instead, it is intended to serve as a guide for the basis and understanding of the recommended findings and conclusions of law of the Hearing Officer. The Hearing Officer has specifically considered all of the testimony and exhibits introduced in this case and the arguments, both written and oral, of the attorneys on behalf of the parties. The fact that many of the specifics of the testimony, documents and arguments are not included in this summary should not be interpreted to mean that it has not been fully considered by the Hearing Officer.

#### **CRAIG MIHALJEVICH (Called in Department's Case (Pgs. 14-65))**

On March 24, 2014, Craig Mihaljevich worked as an Illinois State Trooper in the Vehicle Investigations department in District Chicago. (14-15). Mihaljevich resided at 6242 South Mason Avenue in Chicago, Illinois with his wife, Monica Escobar, and their daughter. (16). On March 24, 2014, Mihaljevich was not on duty and he drove his wife to school. (16). His wife left her phone in the car when she exited the vehicle. (16). When Mihaljevich saw her phone, he saw text messages from another man. (16). The text messages were inappropriate and indicated his wife's involvement with another man. (17). Mihaljevich used his wife's phone to contact the man [via text message] and invited him to his home. (17, 28-29, 56). He did not identify himself in the text message to the man. (18, 49). Mihaljevich denied that he was trying to trick the man into coming to the house by not identifying himself. (18). Mihaljevich planned to tell the man it was inappropriate to be contacting his wife and to cease and desist his actions, but he did not say this in the text message. (18-19, 29). Mihaljevich denied instructing the man to come into his residence, into his front door, and to get undressed. (19, 45, 59, 62, 64). Mihaljevich did not

instruct the man to ring the doorbell, knock on the door, or wait for someone to let him in. (19). Mihaljevich did not know if his wife had ever invited the man to his house before and he did not know if his wife would leave the door unlocked for him if he ever came over before. (19-20). Mihaljevich did not know if the man had any standing invitation from his wife to come into the house. (20).

Mihaljevich took part of an administrative interview regarding the March 24, 2014 incident. (20). He received notice of the allegations, read and understood the notice, and signed the notice prior to the interview with knowledge that admissions from that interview could be used against him. (20-21, 24). Mihaljevich had the opportunity to seek, and did seek, counsel for the interview. (21, 23).

Mihaljevich was not happy when he saw the message from the man who was communicating inappropriately with his wife and he was not comfortable with the situation of somebody contacting his family, however he denied being angry at the time. (28-29). Mihaljevich's intent was not to embarrass the man but to have him cease contact with his wife and for the man to no longer involve himself with Mihaljevich's family. (18, 29). Mihaljevich left his door unlocked that morning. (29). He was downstairs in his house when he heard a person enter his home, however he did not call out, indicate that he was home, or immediately call 911. (29-30). He did not immediately grab his service weapon when he heard someone enter his house. (30). Mihaljevich denied that he did not take any of the above actions because he was expecting someone. (30).

Mihaljevich could not specify how long the person was in his house before he took action. (30). He did not know how long it took the person to get undressed. (30). He did not take action until the person passed what he considered the household threshold because people that stop by his house know not to go past certain points. (30). The point that they would know not to go past would be into the private residence. (31, 61). Mihaljevich was in the laundry room

downstairs where his ISP duty belt was stored. (31). Once the person passed the household threshold, he took action by putting on his duty belt. (31). At some point, he drew his service weapon. (31). He did not identify himself as a police officer when he first put on his duty belt because he was downstairs alone. (31). He did not shout to the upstairs that he was a police officer. (31). When he discovered the naked man, he had his gun drawn at the low ready position. (31). At this point, Mihaljevich identified himself as a police officer. (31-32).

Mihaljevich continued to hold his gun at the low ready position and he denied pointing his gun at the naked man. (32). As far as Mihaljevich could tell, the naked man was unarmed. (32). The naked man did not move towards Mihaljevich, he did not threaten him, he did not attempt to flee, and he put his hands up when instructed to do so. (32). Mihaljevich is approximately six foot three inches tall. (32). The naked man was two or three inches shorter than Mihaljevich. (32).

The naked man was being cooperative. (34). The man identified himself as a state trooper orally multiple times but he was unable to prove it. (34). Mihaljevich handcuffed the naked man after he gave him the opportunity to go to his clothes and show proper identification supporting his statement that he was a state trooper. (34). The man had no identification, in either the form of a state ID or state police [ID]. (34). Mihaljevich handcuffed the man and instructed him that it was for his safety and [Mihaljevich's] until he could determine the man's identity. (34). He handcuffed the man behind his back. (35). Mihaljevich was not in immediate danger nor was his life being threatened when he handcuffed the man. (35). Once detained, the naked man was not free to leave. (35). Mihaljevich detained him because he entered his house without permission and he believed this was the crime of trespassing. (35).

Once the man was detained, Mihaljevich's emotions were flying high and he immediately called his neighbor, a Chicago Police Department officer who lived approximately thirty to fifty yards from his house. (35-36). Mihaljevich called his neighbor twice. (36). At that time, Mihaljevich did not call the police. (36). Mihaljevich's neighbor brought his service weapon to



the house so there were two guns in the house and the naked man was unarmed and handcuffed. (36).

Before his neighbor questioned the naked man, he instructed Mihaljevich to call 911 to handle the situation as a procedural matter. (37, 39-40). Mihaljevich called 911 soon after his neighbor got to the house. (40). Mihaljevich could not recall if there were questions asked by his neighbor before calling 911. (41). After contacting CPD, the neighbor asked the naked man questions about his relationship with Mihaljevich's wife. (37). When the neighbor was asking questions, Mihaljevich knew that he had texted a man that morning to come to his house who was having a relationship with his wife. (38, 41). Mihaljevich also knew, after CPD was contacted, that the man in his house was a man who had a relationship with his wife. (38). At that point, it was reasonable to assume that the man in the house was the man Mihaljevich had contacted that morning. (38-39). Mihaljevich knew that he texted a man to come to his house and the naked man was presumably the man he had texted but he still kept him detained because he did not know who the man was, he had trespassed, and he had already contacted CPD. (39). Mihaljevich wanted CPD to make the decision to release the man. (39).

When he called 911, Mihaljevich recalled saying there was a naked man in his house, asking them to send a police car or send police, and giving [the operator] his name and address. (42). The 911 tape was played during the hearing. (Departments Exhibit 2). (42-44). Mihaljevich told the 911 operator that he had a naked man in custody at his house and requested that a squad or beat car be sent over. (43). He provided his address and his name to the operator. (43). He advised that he was an ISP officer, he was there with his neighbor, who was an off-duty CPD officer, and the scene was secure. (43-44). The voice on the call was Mihaljevich's and the call was an accurate depiction of the conversation he had with 911 that day. (45). On the 911 call, Mihaljevich did not tell the operator that he had invited a man to the house using his wife's phone. (45). Mihaljevich invited the man to the house, not into the house. (45, 46, 62, 64).



When CPD officers arrived, Mihaljevich did not immediately tell them that he invited the man to his house using his wife's cell phone. (45-46). Mihaljevich told CPD the individual was not invited to his house. (46). He then clarified his statements by saying that he did not invite the man into his house. (46). When CPD arrived, Mihaljevich did not tell them that he had messaged the man from his wife's phone. (48-49). Mihaljevich did not identify himself to the man he sent the message to as using his wife's phone (18, 49). After CPD had been there for a while, Mihaljevich did admit that he had sent a message from his wife's phone because it was determined that this man was the same individual he had sent a message to. (49). Mihaljevich did not admit to the CPD officers that he instructed the man to come into his residence, that he instructed the man to get naked, or that he left a note instructing the man to get naked. (49-50, 54-56, 57-58). Mihaljevich said the CPD officers would be making false statements if they said he told them he instructed the man to come into his house or instructed the man to get undressed. (50). Mihaljevich said the CPD officers would have no reason to lie about what he told them that day. (50). Mihaljevich denied apologizing to the CPD officers for calling them to his house under false pretenses. (50, 56-57).

Initially when CPD arrived at Mihaljevich's house he offered to sign a complaint, but he could not recall what the exact charge was. (51). When he offered to sign the complaint, he did not know the naked man was the man he invited to his house. (51). At that time, he knew that he had invited a man to his house but it was not determined yet that the man he had detained was the man engaged in an inappropriate relationship with his wife. (51).

During his administrative interview, Mihaljevich was asked if he instructed the individual via text message or any form of communication to enter his residence, to come to his residence, enter the front door, or undress, which he denied. (54, 56). Mihaljevich was also asked during the interview if he apologized to Sergeant Flores for Calling CPD under false pretenses, which he denied. (56-57). Mihaljevich also denied that there was a note left on a chair telling the

individual to remove his clothes. (57-58). Mihaljevich further denied that he instructed the individual, later identified as Trooper Czub, to let himself in through the unlocked front door and undress. (59).

Mihaljevich said what gave him pause that day was when someone crossed the threshold to his private residence. (61). The threshold was crossed when Mihaljevich heard footsteps going up an additional set of stairs to his family's private residence, that being the bedrooms. (61). Someone entering his house did not alarm him given his medical situation. (61).

Mihaljevich could not recall whether he had the man kneel when he was handcuffed or at any point during that day. (61-62). Mihaljevich could not recall the exact wording of the message he sent to the man, but he was sure that he never invited the man into the house, but instead only to the house. (45, 62, 64). Mihaljevich stated that there would be no need for him to invite somebody into his house because he would meet them at the door. (62, 64).

**ROBERT K. EIGENBAUER**  
**(Called in Department's Case (Pgs. 66-112))**

Robert Eigenbauer has been a Chicago police officer for nearly thirty years. (66). On March 24, 2014, he was off-duty and was at home. (67). Eigenbauer lived at 5944 West 63<sup>rd</sup> Street in Chicago, Illinois. (67). On March 24, 2014, Eigenbauer received two phone calls from Trooper Mihaljevich. (67). The first of the two phone calls got disconnected, but both calls were very fast. (67). Mihaljevich was trying to tell Eigenbauer he had a man in his home that broke into his house and asked Eigenbauer to come over. (67). Eigenbauer did not have a social relationship with Mihaljevich and he had never been to Mihaljevich's home before. (67-68, 86, 88).

When Eigenbauer went to the Mihaljevich home, he saw a naked man handcuffed in the center of the living room. (68). Eigenbauer was armed when he went to the home because he "didn't know what the hell he was getting into." (68). After he entered the home, he was listening to Officer Czub who was "pretty much pleading for mercy so to speak." (68). Czub was

doing the majority of the talking and he was talking to Eigenbauer. (68-69). Czub was speaking to Eigenbauer because he informed Czub that he was a Chicago police officer. (68-69). After he made it known that he was a Chicago police officer, Eigenbauer proceeded to question Czub. (69). Eigenbauer was asking questions regarding Czub's identity after Czub informed him that he was a state trooper. (69). Mihaljevich was in the same room during the questioning. (69). Mihaljevich was on Eigenbauer's left and Czub was in the center of the room. (69). The questioning was professional and direct to the point. (69). Eigenbauer never knew Czub was a state trooper. (70). He said he was a state trooper, but he had no identification on him. (70). Eigenbauer said to Czub if he were a state trooper, he would know he was supposed to be carrying his ID on him. (70). Eigenbauer found it strange that Czub did not have ID and he had no way to identify Czub. (70). Eigenbauer listened to Czub ask Mihaljevich not to call the police and Mihaljevich was not sure what to do. (70).

Eigenbauer continued with his line of questioning and he ascertained it was a domestic situation that he was brought into. (71-72, 78). Eigenbauer asked how Czub knew Mihaljevich's wife, as that was Eigenbauer's only plausible explanation for why Czub would be in the house. (72). Eigenbauer knew Mihaljevich was a trooper and did not know why you would go into another policeman's house. (72). Eigenbauer was trying to extract all the information from Czub because he knew there was more to what Czub was saying. (72). After Eigenbauer had gotten the information from Czub he looked to Mihaljevich who asked what they should do and Eigenbauer told him "we're going to call the police whether you do it or I do it." (72). Eigenbauer did not consider whether he was on- or off-duty when he arrived at the Mihaljevich home. (72-73). After Eigenbauer said to Mihaljevich that 911 needed to be called; Mihaljevich picked up his phone and proceeded to call 911. (73). Eigenbauer instructed Mihaljevich to have the police send a supervisor to the scene as a procedural matter. (73).

Chicago police showed up and there were four or five officers, and several squad cars,



both marked and unmarked. (74, 105). Several of the officers were let into the home to ascertain what was going on. (74). When the police arrived at the home, Eigenbauer knew the officers were going to make light of the situation, and he observed the officers smiling and laughing to themselves. (76-77). Eigenbauer took affront to that behavior and he made the statement that Czub should be arrested for criminal trespassing. (77). Eigenbauer said he should have been arrested because it is not [a police officer's] determination to make, a judge should make it. (77). Eigenbauer said he could have justifiably arrested Czub and had probable cause for the arrest and he would have documented that. (77). Eigenbauer also had a problem with the fact that no documentation was brought by the Chicago Police Department and he knows the procedures and there should have been a report generated. (77). Eigenbauer was with Mihaljevich the whole time he was there and the only time Mihaljevich was not in his presence was when he stepped outside so the sergeant could interview him. (77-78). At some point Eigenbauer might have gone out and spoken with the sergeant, but he could not exactly recall that. (78).

Eigenbauer could not recall the exact chronology of when he ascertained there was a relationship between Czub and Mihaljevich's wife, whether it was before or after 911 was called. (78). Eigenbauer ascertained that it was a domestic almost immediately based on his years of experience in responding to situations. (78). Eigenbauer also recalled a similar situation occurring where a guy broke through his door as he was watching TV and he regretted not having his weapon on him at the time. (78-79).

After the incident, Eigenbauer never got the opportunity to talk to Mihaljevich because the officers were constantly interviewing Mihaljevich. (79). Eigenbauer said that he did not speak on the phone to Mihaljevich that day, after the incident. (79). Eigenbauer was presented with Department's Exhibit 3, a T-Mobile bill with call logs for Mihaljevich's personal phone number. (80-81). Officer Eigenbauer stated his phone number and that he saw it near the top of page thirty of the telephone call log. (81-82). Eigenbauer stipulates that although it is his phone

number that appears, the call illustrates one minute, but it did not last one minute because the carrier bills in one-minute increments. (82). Eigenbauer said that the calls were quick. (82). Eigenbauer's phone number also appeared at the bottom of page thirty for an approximately thirty-three minute phone call and on the next page for a six minute phone call. (82-83). The second phone call followed exactly the first because the first call might have been dropped. (83). The first of the two phone calls occurred at 10:32 p.m. and the second at 11:13 p.m. (83). Eigenbauer said that these calls were not that day, they were later on that night, considerably later that day, but it was still March 24, 2014. (83). Later in the call log, on page thirty-nine, Eigenbauer's phone number appeared at 2:36 p.m. and again at 3:28 p.m., with both calls less than one minute each. (83-84). Eigenbauer did not believe that he had any contact with Mihaljevich after the incident (on the day it occurred), but since it was considerably later that night, an hour and a half away from midnight, he said it was closer to the next day. (85). Eigenbauer did not recall what he spoke to Mihaljevich about for thirty-three minutes. (85).

Eigenbauer did not have a social relationship with Mihaljevich before this incident. (86). He got Mihaljevich's phone number because he has a tendency of exchanging phone numbers with most of his neighbors. (86, 89). [Exchanging numbers] is something he does as a police officer. (87, 89). Since Mihaljevich was his neighbor, at some point they were introduced. (87). Eigenbauer had lived in his building for twelve or thirteen years and Mihaljevich was relatively new to his building. (87). At some point they made an introduction and when Eigenbauer found out Mihaljevich was a state trooper he asked Mihaljevich if he wanted to exchange numbers. (87). Eigenbauer has never walked Mihaljevich's dog. (87). Eigenbauer has possibly exchanged two or three text messages with Mihaljevich but to his best recollection he has never spoken to him on the phone. (87-88). Eigenbauer had never been inside Mihaljevich's home. (88).

On cross-examination, Eigenbauer stated that he has known Mihaljevich for several years and during those several years, he had never walked Mihaljevich's dog. (88). Prior to March 24,

2014, Eigenbauer had never been to Mihaljevich's house nor did Mihaljevich ever visit Eigenbauer's house. (88). Eigenbauer lived perpendicular, or kitty-corner, to where Mihaljevich's house was. (88). The rear end of Mihaljevich's house faced the rear end of Eigenbauer's apartment building and since Eigenbauer lived on the third floor he could "pretty much see everything" from his balcony. (89).

On the day of the incident, Eigenbauer entered Mihaljevich's house through the front door. (89, 91). He saw Mihaljevich's marked trooper car outside of the house and he believed it was parked in front of the house. (89). Mihaljevich's ISP squad car was fully marked. (89).

Eigenbauer had a habit of giving his phone number to neighbors because he is a Chicago police officer. (89-90). He knew that was how Mihaljevich received his phone number and he and Mihaljevich did not socialize together at all, it was more professional. (90). Eigenbauer was putting his information out there and hopefully the other individual would reciprocate [the exchange]. (90). Eigenbauer considers exchanging information being good neighbors. (90). Eigenbauer would not describe Mihaljevich as a friend; at best he would describe him as an acquaintance. (90). Eigenbauer recalls the phone call from Mihaljevich around 9:45 a.m. as being abrupt, Mihaljevich asked Eigenbauer if he could come over, and told him he had a naked man in his house, that broke into his house. (90). Eigenbauer put on pants and "kind of ran over there." (91). He entered through the front door. (91).

When Eigenbauer entered the house, he saw Mihaljevich standing back away from the door and he let Eigenbauer come in. (91). Eigenbauer saw Czub standing, handcuffed, in the center of the living room. (91). Eigenbauer wanted to say Mihaljevich was wearing his holster, but he could not recall seeing the weapon in his hand. (91). Eigenbauer never saw Mihaljevich point his weapon at Czub. (91). Eigenbauer described the house as having a straight shot hallway that leads down to the ground level and he guesses there is a basement below that. (92). There is a staircase leading down to a den or family room. (92). Offset from the den, there is a staircase



going up to the bedroom quarters upstairs. (92). Eigenbauer was able to see the hallway outside the bedrooms. (92). Eigenbauer described the hallway as a standard narrow residential hallway, three feet or three and a half feet [wide]. (92). He thought that with disability laws, hallways have to be a certain amount of feet [wide]. (92). From the living room, Eigenbauer never saw a chair outside of the bedrooms. (93). Eigenbauer did not think it would be practical based upon the dimensions of the hallway to have a chair sitting outside the bedroom. (93). He said there would be no room to walk by with a chair in the hallway, you could squeeze by, but it would not be practical. (93).

When Eigenbauer arrived, Czub was naked and in handcuffs. (93). At some point, Czub identified himself as a trooper. (93). Eigenbauer could not recall if Mihaljevich asked Czub for ID, but Eigenbauer knew that he asked for ID. (94). Czub did not have any ID on him. (94). Eigenbauer could not recall where Czub's clothes were at the time. (94). He was present when Czub dressed but he did not know where Czub obtained his clothes. (94). Eigenbauer recalls one of the arriving Chicago police officers unhandcuffing Czub and one of the officers told him to put his clothes on but he cannot recall if the police officer handed Czub his clothing or if Czub went and got them. (94). When Eigenbauer arrived and saw the naked man, after asking for ID, he asked why he was there. (94-95). Eigenbauer said Czub danced around the answer, Eigenbauer could not recall Czub's reasoning for why he was there but he did recall him constantly being apologetic for the situation and offering Mihaljevich money. (95). First, he offered Mihaljevich \$2,000 and Eigenbauer thought that when Czub heard him instruct Mihaljevich to phone 911 he upped his ante to \$5,000. (95). Czub asked Eigenbauer and Mihaljevich not to call the police because he is married and he has children. (95). After finding out that he had a wife and kids, Eigenbauer asked, "what the hell are you doing here." (96). At some point during Eigenbauer's questioning, Czub admitted he was having an affair with Mihaljevich's wife. (96). Never during Eigenbauer's conversation did Czub tell him that he was

invited to the house, told to undress and go upstairs, or anything of that nature. (96). Czub never said to Eigenbauer that there was a note on a chair that told him to undress and Eigenbauer never saw a note or a chair. (96).

When the Chicago Police Department officers arrived, Eigenbauer remained in the house pretty much the entire time. (96). Eigenbauer was within earshot of all the conversations that took place in the room and he heard conversations between Chicago police officers and Czub. (96-97). Eigenbauer never heard Czub tell the Chicago police officers that he had received a text inviting him to come over and that there was a note on a chair upstairs. (97). Eigenbauer never saw any of the Chicago police officers go upstairs outside the bedrooms to look for a chair or a note. (97).

Command personnel from the Illinois State Police arrived. (97). Eigenbauer believed that two officers entered Mihaljevich's house and he did not know if they were Mihaljevich's direct supervisors. (97). Eigenbauer said that the ISP officers were ranking officers, meaning that they were ranked above sergeant. (97-98). Eigenbauer overheard conversations between Czub and the ranking ISP officers when he was in the room within earshot, but there was not much of a conversation between Mihaljevich and the two officers that arrived. (98). Czub was not outside the residence at any time prior to the ranking ISP officers arriving. (98). Eigenbauer never saw Czub erasing text messages from his telephone because he never had his telephone. (98). Eigenbauer recalls that telephone was on the ledge and he did not know how it got there, but he believed it was Czub's because he recalled someone handing it to him at some point; but he said Czub never deleted anything. (98-99). Eigenbauer never saw the ISP ranking officers go upstairs outside of the bedroom to look for the alleged chair and note. (99).

Eigenbauer left the residence at some point in the afternoon. (99). Eigenbauer saw Czub's ISP vehicle when he was called outside to be interviewed by the DII. (99-100). Eigenbauer said that two DII officers, Officer Jones and her partner, Lieutenant Gipson, arrived and they asked



him outside to interview him. (99-100). At that time, he looked down the block and saw a trooper vehicle and he could not know that it was Czub's, but it was considerably down the block. (100). Eigenbauer could not recall whether he saw the ISP vehicle down the block before or after the ISP ranking officials arrived. (100). Eigenbauer believed the ISP SUV was Czub's vehicle because he said he was a state trooper and he did not have his identification on him, so that led Eigenbauer to think that his identification was in the vehicle, if Czub was who he claimed to be. (100-101). Eigenbauer said, "hell yes," he was under the impression that Czub was trying to conceal the fact that he was an ISP officer because of the location of where he parked. (101). Eigenbauer thought that where Czub parked was deceptive because if he was invited to the house and there was ample parking on Mason Avenue, he would pull as close to the residence as possible. (101). Eigenbauer knew there was ample parking on Mason Avenue because he has had to park there often due to street cleaning situations. (101). He said the fact that he observed the vehicle parked at the other end of the block made him think Czub was a snake. (101). There was available parking closer to Mihaljevich's house because it was 9:45 a.m. and most people are at work. (101-102). The DII's cars were parked pretty much toward the front of Mihaljevich's house, specifically across the street, but not far from his front entrance. (102).

ISP DII interviewed Eigenbauer twice and he was sent summaries of both interviews to review. (102). Eigenbauer reviewed the summaries. (102). During the second interview Eigenbauer voiced concerns to the DII agents that things were left out of the summary of his interview. (102-103). Eigenbauer was "peeved" because he met with DII for almost an hour and the body of his supposed statements were extremely short and Officer Jones told him it is just a synopsis of his statement but Eigenbauer said some details were left out. (103). The second interview occurred recently before the hearing. (103). The details left out of the summary were that there was never any mention of Czub having any identification, that Eigenbauer said Czub didn't have any identification. (104). There was no reference to the money issue, Eigenbauer

clearly heard Czub offering the money and there was no mistaking that. (104). Eigenbauer said a bribe is a bribe. (104). Eigenbauer was also not pleased that Officer Jones and her partner were tag-teaming back and forth and kept asking about a chair and a letter. (104). He was frustrated because he said Czub never brought up anything about a chair or a letter that day and Eigenbauer said he had already answered the question. (104-105). Eigenbauer never saw a chair or a letter and it was not included in the summary of the interview.

Four or five Chicago police officers arrived to the scene, not counting the sergeant because he is a supervisor. (105). There were some plain-duty, plain marked vehicles that came by. (105). Eigenbauer said officers have a tendency of being nosey and supportive at the same time. (105). One of the officers primarily handled the investigation and it was not the sergeant. (105-106). Mihaljevich spoke to the sergeant outside so Eigenbauer was not privy to that conversation. (106). One of the other officers spoke to Czub. (106). The other two or three officers were listening, or holding the background, while the first officer was conducting the interview. (106). They were talking amongst themselves and after Eigenbauer made the comment that Czub should be arrested for criminal trespass the officer went over and talked to Czub. (106). Eigenbauer recalls the officer, a patrolman, being cavalier and walking toward the front and saying, "there is no crime here." (106-107). Eigenbauer did not recall whether all the officers left at the same time, however he did not believe they did so. (107).

Toward the end of the investigation, Eigenbauer heard Mihaljevich apologize to the Chicago police officers and he believed he apologized because he was embarrassed. (107). He perceived the apology as Mihaljevich was visibly embarrassed and was sorry that the police officers had to come out for this. (107). Mihaljevich did not appear to be apologizing for his own actions. (107). He was apologizing because the Chicago Police Department had to come out there and learn that one trooper was having an affair with another trooper's wife. (107). Eigenbauer clarified that 911 was going to be called whether Mihaljevich did it or he did it

himself. (108). Eigenbauer did not suggest calling, but being that the individual was handcuffed and in a place where he clearly did not reside, the police were getting called. (108).

**JASON CZUB**  
**(Called in Department's Case (Pgs. 112-189))**

Jason Czub is a trooper for the Illinois State Police assigned to District 15, the tollway. (112, 144). Prior to March 24, 2014, Czub was engaged in an extramarital relationship with Mihaljevich's wife, Monica. (112-113). Czub met Monica on an adult website called Fling, in early December 2013. (113, 148). Czub met with Monica prior to March 24, 2014. (113). Czub and Monica texted a couple times a week and they met approximately no more than eight times during the four and a half month time span. (113). They met once at Czub's house, once at Monica's house and in the neighborhood twice. (113). Czub would communicate with Monica on a texting application she told him to download called WhatsApp. (113-114, 149). The majority, of their conversations were based on that app. (114). Monica eventually told Czub she was married when they first talked on the adult website. (114).

Czub had plans to meet with Monica on March 24, 2014. (114). Czub and Monica engaged in a conversation on WhatsApp the Thursday before the incident, which was on a Monday. (114-115). The conversation Thursday occurred in the later evening hours. (115). It consisted first of Monica telling Czub not to text her because "he has my cell phone." (115). Czub responded asking if he was not to text her right now or not to text her ever. (115). Monica responded within an hour or two and said everything was fine, and asked, "does she know," which caught Czub off guard. (115). Czub responded that she did not know, assuming that Monica meant his wife. (115). The conversation then turned different and Czub asked if he could fulfill a fantasy of Monica's. (115).

On the Thursday before the incident, Czub determined who the messages came from based on the person's name in his phone, which was listed under Monica. (118). Czub was unfamiliar with WhatsApp before he was told to download it; he could only say that it is a



texting application and/or video device service. (118). Czub said it automatically syncs contacts from your phonebook and shows the names on the app. (118). There is also a picture of the person's face if they display a picture by their number. (118). There was a picture of Monica by her number. (118). Czub received messages from a person that he thought was Monica on Thursday in the evening hours. (119). Czub was invited over to meet Monica on March 24 through the messages on March 20, 2014. (120).

On March 24, 2014, Czub woke up, went through his cell phone and looked through the WhatsApp application. (120-121). Czub saw a couple messages that he thought were from Monica. (121). The messages were dated that morning. (121). There were a couple messages sent to Czub asking if he was still coming over and to hurry up. (122). Czub responded saying he needed to gather his stuff and go to the park with his dog and that he should be over soon. (122). He received a message back saying the door will be unlocked, to come inside, to follow the instructions on the note, and if he did not, he would not get his surprise. (122). After reading that message Czub felt uneasy about the conversation and that it did not seem right. (122). He asked about her husband. (122). Czub asked where Monica's husband was and she replied that he was in Oak Lawn at a medical clinic or facility. (122). Czub asked what time he would be getting home and she responded by saying 1:00 p.m. (122-123). Czub felt uneasy about the conversation and he asked what happens if he leaves early or is released early from the clinic and decides to take a bus home. (123). She responded he would not take the bus home because he has always said buses are for poor people, which Czub thought was an unusual statement. (123). Czub responded that he was leaving. (123). Monica asked whether Czub was going to keep talking about her husband or did he want to see her. (123). At that point, Czub proceeded to go to the residence. (123).

When Czub arrived at the residence, he parked across the street from the house, maybe one house down. (123). Czub noticed the house had all the blinds closed. (123). Czub exited his



vehicle and went towards the house. (124). There was no reason Czub did not park right in front of the house. (124). When he got to the house, the door was unlocked. (124). Czub opened the door and the first thing he noticed about the house was there was romantic music playing in the background. (124, 125). He did not recall the song but he could tell it was romantic music. (124). Czub did not hear anything else when he entered the house. (125). He did not hear any people in the house. (125). Czub did not recall hearing a dog barking. (126). Czub looked straight ahead and noticed there was a third level or where the bedrooms are about three to four steps up. (124, 125). Straight ahead, there was a black swivel desk chair. (124, 125). The chair was facing him and as he walked towards it, he saw a note attached to the chair. (124). He proceeded up the stairs and the note said something along the lines of place your clothes here and "come find me," or "find your surprise." (124-125). Czub followed the instructions on the note. (125). Czub took of his clothes and placed them on the black desk chair. (125). He looked to his right and saw a door that was open and no one was in the door, he did not go into the doorway. (125). The next room over, or the next door over, was closed. (125). He went around the chair and opened the door. (125). No one was in that room. (125). Czub turned his back and he encountered who he believed was the owner of the house at gunpoint. (125).

Czub was undressed when he encountered someone in the house. (126). The person he encountered was a male subject wearing a white V-neck shirt tucked into a pair of jeans. (126). Czub assumed it was a state police issued gun belt because he had his gun belt on. (126). Czub had his back turned the entire time. (126). Czub turned around and Mihaljevich ran up the stairs with his gun drawn at Czub. (126, 157). Mihaljevich was armed. (126). Mihaljevich did not identify himself as a trooper. (126). Mihaljevich told Czub numerous times to "freeze MF'er," and "don't move or I'll shoot you." (127, 159-160). Czub said "don't shoot me, I'm a police officer" multiple times. (127). Czub turned around when Mihaljevich told him to and placed his hands behind his back. (127). Mihaljevich handcuffed Czub. (127). Czub believed he was

cooperative with Mihaljevich. (127). Czub was in the residence no more than five minutes before Mihaljevich approached him with his gun. (127).

Now that Czub was handcuffed, he began to apologize to Mihaljevich, saying he was sorry numerous times. (127). Czub told Mihaljevich he was a police officer and Mihaljevich said he would confirm that momentarily. (127). Mihaljevich walked down the stairs, looked through his front window and saw Czub's squad car parked in front of his house. (127-128). Mihaljevich said something along the lines of he cannot believe another state trooper would do this to him, he has been an officer so many years and would lay his life down for another trooper, he cannot believe an officer would do this to him. (128). Czub began to apologize to him and asked what Mihaljevich wanted from him. (128). Mihaljevich asked if Czub had \$20,000. (128). Czub was naked and handcuffed throughout this conversation. (128). Czub's wallet, which has his badge inside, was inside with his clothes. (128). Czub did not know if he had his wallet inside the house with him. (128). Czub knew that he had his keys and cell phone but his wallet might have been in his squad car, he could not recall whether the wallet was with him or in the car. (128-129). During the conversation about the money, Mihaljevich asked Czub if he had \$20,000. (130).

After the conversation about money, Mihaljevich guided or escorted Czub back to the main floor. (130). Mihaljevich had Czub's cell phone in one hand and Monica's in the other hand. (130). Monica's cell phone had a green cover. (130). Czub then said Mihaljevich had one cell phone, Czub's, in one hand and his cell phone in the other hand. (130-131). Czub did not know what Mihaljevich was going to do. (131). Czub's first thought was that Mihaljevich was going to take pictures of him handcuffed and naked and send it to Czub's family and friends. (131). Czub was not sure what was happening. (131). All Czub knew was that he had each cell phone in each hand and Mihaljevich was going through both cell phones, and Czub did not know what was going on. (131). Czub asked Mihaljevich what was going to happen and Mihaljevich said he was going to have Czub arrested. (131). Czub asked him what he would be arrested for

and Mihaljevich responded indecent exposure since Czub was naked. (131). Mihaljevich then called a friend saying that he had him in handcuffs, come over right now, come to the front door, it is unlocked. (131).

Someone arrived on the scene very shortly after. (131). When Mihaljevich's friend, Eigenbauer, arrived on the scene Czub spoke to him. (131). Eigenbauer did not identify himself but he did have a gun on his hip. (131-132). Czub could not tell if he was another trooper, if he was a Cook County Sheriff or CPD officer, but Czub assumed he was a police officer based on the gun on his hip. (132). At this time, Czub did not know what was happening or what was going to happen. (132). He did not know if they were going to kidnap him, shoot him, or beat him up. (132, 165). Czub tried to agree with them. (132). Czub was speaking with Eigenbauer and Eigenbauer asked where Czub and Monica engaged in their activities. (132). Eigenbauer guessed it was a hotel, and Czub said it was a hotel because he wanted to agree with Eigenbauer. (132). Eigenbauer asked the name of the hotel and Czub said it was a hotel in Countryside, Illinois but he did not know the name of the hotel. (132). Eigenbauer and Mihaljevich went to the kitchen area behind Czub and Czub heard a very vague conversation between them saying something about Czub's cell phone and the GPS. (132). Czub did not know the exact conversation; he just heard GPS and cell phone. (132). Eigenbauer and Mihaljevich proceeded to come next to Czub and Mihaljevich asked Eigenbauer if he should dial 311 or 911. (132-133, 166). Eigenbauer said to make it look real dial 911. (133, 166). During the whole conversation, Czub was naked and handcuffed. (133). Mihaljevich dialed 911 and Czub heard his conversation with the operator. (133). Czub said the conversation was somewhat of a blur because he was handcuffed and naked. (133). Mihaljevich gave his address, stated that he was an off-duty officer and there was a naked intruder in his house and he had him handcuffed. (133). Czub did not know if Mihaljevich told the Chicago police dispatch to slow it down or not to rush because he had him in custody. (133).



The Chicago Police Department arrived. (133). Czub spoke with an officer from CPD. (134-134). Czub could not recall his name but he remembered it was an Irish last name. (134, 167). Czub did not know if he was the primary officer handling the incident but he was the one Czub engaged with in most of his conversations. (134). Czub told the officer that he was invited over and that he thought it was Mihaljevich's wife. (134). Czub asked him what was going to happen to him and the officer said everything is okay. (134). When the Chicago police first got there they unhandcuffed Czub and allowed him to put his clothes on. (134). Czub put his clothes on and spoke with him in what he thought was the living room area and told him what happened. (134). The officer told Czub that charges weren't going to proceed because he was invited over and that Czub did not do anything criminally wrong. (134). Czub was not criminally charged that day. (134-135).

Czub believes that the officers spoke with Mihaljevich but he did not overhear any of the conversations because some of them were possibly outside. (135). After Czub spoke with police officers, Mihaljevich spoke to him. (135). Czub told Mihaljevich he was sorry. (135). Mihaljevich said that once the day is done, they were done. (135, 152). He told Czub to leave his family alone. (135). If he ever sees him in a restaurant, he should walk by. (135). Mihaljevich did not want anything to do with Czub. (135, 152). Mihaljevich also said he was not going to tell Czub's wife about this incident. (135). Czub did not have any contact with Mihaljevich after. (135).

Illinois State Police arrived at the scene. (135-136). Czub was told to have a seat in his squad car by the officer he was talking to the majority of the time. (136). Czub sat there for about ten minutes and then the CPD sergeant on the scene spoke to him. (136). The Sergeant was the second officer that approached Czub's squad car, and he said that he had to contact Czub's department so Czub should just stay there. (136). When the ISP personnel arrived, Czub's lieutenant at the time, Renaud, came on the scene. (136). Renaud told Czub to relax and calm



down and asked if he was okay. (137). Renaud told Czub that DII would be there shortly and she had Czub write a fact-finding memo in his squad car. (137).

Czub deleted the text messages he received that day as soon as he left because he thought the state police were not going to get involved. (137). Czub always deleted the messages between himself and Monica; every time that they talk he has never saved the messages. (137, 149). When Czub was told to have a seat in his squad car, he thought he was going to go home so he deleted the messages. (138). Czub always deleted the messages because he was married and did not want his wife seeing the messages. (138). Czub deleted the messages prior to Renaud appearing on the scene. (138).

Czub wrote a fact-finding memo, which was introduced as Department's Exhibit No. 4. (138). The memo was a general memo that Czub wrote and it was the best he could recall based on everything that happened to him shortly after the incident. (139). The memo has Czub's handwriting and is a true and accurate reflection of what he wrote that day. (139). The memo was not admitted to evidence. (140). As a result of this incident, the Illinois State Police filed a complaint against Czub charging him with a violation of LEADS and conduct unbecoming. (140). Czub's violation of LEADS was using LEADS not during business hours to see if Monica was married to a trooper. (141). The Department also charged Czub with conduct unbecoming of an officer. (141). ISP also charged Czub with use of his squad car off duty. (141). Based on this complaint, Czub received punishment. (141). Czub agreed to MASA and admitted his fault and wrongs. (141). Czub was given an opportunity to go against the proceedings but the Department offered five days of suspension which he agreed to because he did not want to challenge it. (141). Czub could have challenged his five-day suspension but he did not. (142). He did not contest the charges and admitted his wrongdoing. (142).

On cross-examination, Czub stated he has been a trooper for nine years. (144). Czub has always been assigned to the same district. (144). Czub became aware that Mihaljevich was a

Trooper assigned to district Chicago while Czub was having an affair with his wife. (144). There were times that Czub felt uneasy about having an affair with another trooper's wife. (145). Czub did not know that Mihaljevich was a trooper before he had sex the first time with his wife Monica. (145). Monica is from South America but Czub does not know her exact ethnicity, just that she is Hispanic. (145). Monica at times had difficulty speaking and understanding the English language. (146).

One of the first times Czub met Monica, she saw his ISP vehicle and she said that her husband drives a car just like Czub's marked ISP car. (146). Based upon that statement, Czub did a LEADS inquiry on Mihaljevich's vehicles, but not right away. (146). Czub did not recall if he learned Mihaljevich was a trooper prior to the time he first had sex with Monica but he was aware that Mihaljevich was a trooper during the course of the affair. (146). Czub had sexual relationships with Monica four to six times. (146-147). The relationships occurred at Czub's house and once at Monica's house. (147). Czub was at Mihaljevich's house and had sex with his wife on one occasion prior to March 24, 2014. (147). Czub was familiar with the house, but not the entire layout. (147). Czub never went upstairs the first time and he was not familiar with the bedroom or the hallway. (147). The first time Czub and Monica had sex it was downstairs. (147).

In March 2014, Czub was married and had been married for five years. (148). Czub had two children at that time who were two and three years old. (148). Czub first met Monica on Fling.com, an adult website. (148). Monica had a user name and a picture of herself on the website and Czub contacted her first. (148-149). Monica told Czub to download the WhatsApp application immediately because it is more private (149). Czub had never downloaded WhatsApp before and he was not familiar with the application before the incident. (149). They used the app to text back and forth. (149). Czub always deleted the text messages between Monica and himself because he did not want his wife to find out. (149). Czub deleted the messages from March 20 on March 20 and deleted the messages from March 24 on March 24.

(150-151). Czub deleted the March 24 messages that said to the person he thought was Monica that he was at the house either immediately or when he got back to his squad car. (151). Czub did not remember if he still had the entire message thread when he went to the house. (151). He deleted the messages before the ISP command personnel arrived. (151). If he deleted the messages in his squad car before he entered the house, they would have been deleted before the Chicago Police Department arrived, but he did not recall if the entire thread was deleted before he entered the house or when he got back the squad car. (151-152). Czub agreed that if he deleted the messages when he got back to his squad car it would have been after Chicago police officers had arrived. (152).

Czub did not think that he might be under investigation at that point in time based upon the fact that he was having an affair with Mihaljevich's wife and the Chicago police arrived because, when he spoke to Mihaljevich, Mihaljevich said he did not want anything to do with Czub and they were done. (152). Czub thought he would be free to go. (152). The Chicago Police Department arrived and investigated the situation. (152). Czub did not know that it would have gotten to his command personnel and DII. (153). He thought it was a possibility, but he did not know for sure that the state police were going to be contacted from CPD because he was told that there were going to be no charges brought against him. (153). Czub thought, due to everything that happened to him, being handcuffed, tunnel vision, blurred vision, he thought would be free to go without an investigation. (153).

Czub remembered receiving messages around 8:00 a.m. on the WhatsApp application but he did not recall the exact time he got to the house. (153). Czub got to the house in the early morning hours, but did not recall if it was 9:00 or 10:00. (153-154). Based upon the messages, Czub was very suspicious that the person he was talking to was not Monica. (154). Czub proceeded to drive his ISP vehicle and park it across the street from the residence, on the same block. (154). Czub did not recall if there was a designated handicap area across the street from



the house. (154). Czub parked one house down across the street from Mihaljevich's house. (154-155). Czub was not on an official maintenance code through his dispatch when he was at Mihaljevich's house. (155). Czub was a K-9 officer and as a K-9 officer he is allowed half an hour to exercise his dog, but he officially was not on a K-9 maintenance code. (155). Czub was never given the proper procedure of when and if he could use his squad car off duty to exercise his dog and give her training. (155). The dog was in his car at the time he was parked on the street that morning. (155-156). Czub was not on any code authorizing him to have his vehicle at Mihaljevich's house which is why he was given part of his suspension; he was using his squad car off-duty. (156). Czub did not see Mihaljevich's squad car in front of his house. (156). The car could have been parked somewhere else, but it was not directly in front of the house. (156).

Czub entered the residence without ringing a doorbell or knocking on the door. (156). Czub did not know why, based on his suspicions, he did not lock the door behind him when he entered the residence. (156-157). Czub was upstairs when Mihaljevich confronted him. (157). He believed it was the third floor. (157). When he was up there, he saw the note on the chair and got undressed and when he turned around towards the hallway he saw Mihaljevich run up the stairs with the gun out and pointed at him. (157). Czub described the chair as a black swivel desk chair but he did not recall how wide it was, just that it was an ordinary, regular black desk chair. (157). Czub described the hallway outside the bedrooms as somewhat narrow with at least three bedrooms and three doors. (157-158). He said the entire hallway was wider than three feet, maybe ten to fifteen feet wide, but he was not concerned about the size of the hallway. (158). Czub believed the hallway had hardwood floors. (158).

Czub was upstairs and naked when Mihaljevich confronted him. (158-159). He followed the instructions on the note and placed his clothes on the black chair, which was upstairs. (159). Czub believed he had his telephone and his keys with him, but he did not know if he had his wallet. (159). His belongings were in a pile placed on the chair and included, a gray hoodie,



pajama pants, tennis shoes, keys, and his cell phone. (159). When Mihaljevich saw Czub he verbally said to "freeze MF'er. Don't move." (159-160). Mihaljevich never told Czub he was a police officer. (160). Mihaljevich said he was going to shoot Czub and told him not to move or he would "blow [Czub's] effing brains out." (160). Mihaljevich then handcuffed Czub upstairs, right in front of the chair, while he was kneeling to the ground with his hands behind his back. (160). Eventually, Mihaljevich escorted Czub downstairs. (160). Czub was on the main floor when Eigenbauer arrived at the residence. (160). Czub was still naked at this time and he was naked until CPD told him to put his clothes on. (160-161).

Before Eigenbauer arrived, Czub told Mihaljevich that he was a trooper when they were upstairs. (161). Czub did not recall Mihaljevich asking for his ID and telling him that he did not have it on him. (161). Mihaljevich said that he would confirm if Czub was a police officer and Czub told him his squad car was parked across the street. (161). Czub did not recall if his ID was with him or in his squad car. (161, 162). When carrying a gun, an ISP trooper is supposed to have his ID on him, but Czub was not armed. (161-162). Czub does not believe that he only needs to carry ID when he is armed; the policy is that he has to carry ID if armed. (162). Troopers are supposed to carry ID at all times. (162).

Czub was downstairs when Eigenbauer arrived. (162). Czub offered Mihaljevich money to let him go because Mihaljevich originally asked Czub if he had money. (163). Mihaljevich first asked if Czub had \$20,000 and Czub said he did not. (163). Mihaljevich then asked how much Czub had in his deferred comp and Czub told him he did not keep track of deferred comp and he only put twenty to forty dollars per paycheck into deferred comp. (163). Czub did not know how much he had in his deferred comp. (163). Mihaljevich then asked if Czub could promote him and Czub said he could not. (163). Czub initially offered one to two thousand dollars. (163-164). Czub said he could give Mihaljevich one to two thousand dollars and that was all he could give, but he did not have it on him. (164). Czub was a trooper out of District 15 at

the time of the incident. (164). Mihaljevich, a trooper from District Chicago, asked if Czub could get him promoted. (164). Czub said this did not make sense to him, he thought it was a smart remark or a jab. (164). Czub knew he was not serious. (164). The \$20,000, deferred comp, and promotion conversation all occurred while they were still upstairs and before Eigenbauer arrived. (164). Czub offered money to Mihaljevich in the presence of Eigenbauer. (164-165). Mihaljevich did not want the one to two thousand dollars. (165). Mihaljevich initially told Czub that he did not want any money from him because in the State of Illinois he could sue civilly for a marital affair. (165). Mihaljevich said he would sue Czub civilly and Czub would be fired from his job, his wife would leave him, and he would have nothing left. (165).

Czub did not beg Mihaljevich not to tell his wife. (165). Czub was scared. (165). He did not know what was going to happen so he tried to go along with Mihaljevich because he was handcuffed the entire time. (165). Czub did not know if Mihaljevich was going to shoot him, kill him, or beat him up. (165). Czub was more petrified when Eigenbauer got there because he had a gun and he never identified himself to Czub. (165). Czub asked what they were going to do with him and when Eigenbauer and Mihaljevich said they were going to call CPD he offered to give Mihaljevich \$5,000. (165-166). The \$5,000 offer was volunteered by Czub and was not in response to anything that Eigenbauer or Mihaljevich said. (166).

Czub heard Mihaljevich call 911. (166). It was Eigenbauer's suggestion to call 911 in lieu of 311. (166). Mihaljevich asked if he should call 911 or 311 and Eigenbauer told him to call 911 if he wanted to make it look real. (166).

When the Chicago police officers arrived, Czub spoke to one officer in particular, although there were a few officers that would ask him questions in a conversation. (166). Czub did not recall the name of the officer he spoke to but he thought it was an Irish officer. (167). Czub spoke to the Irish officer primarily and he asked Czub what happened. (167). Two other officers that Czub saw in the neighborhood before were there and they made statements towards

him. (167). The only time Czub spoke to Sergeant Flores was when Flores came to Czub in his squad car. (167).

At some point in time, Czub got his phone back but he did not recall who gave it to him. (167). Czub had complete tunnel vision. (167). An officer unhandcuffed him and either said to get his clothes or handed Czub his clothes, but Czub did not recall who gave him his cell phone. (167-168). Czub did not recall if he deleted all the messages before he entered the house or after. (168). Czub did not know if the text messages between himself and Monica were on the phone when he was given his cell phone and clothes back. (168). Czub erased them, but he did not recall if he erased them before he entered the house or when he got back to his squad car. (168-169). All the messages were erased either before Czub went into the house or after when he got back his cell phone. (169).

DII did not talk Czub into filing criminal charges against Mihaljevich; they advised Czub that it was an option. (169). DII suggested filing criminal charges to Czub on several occasions. (169). Czub was not under the impression that DII was trying to talk him into filing charges because when he asked one of the DII officers what filing charges consisted of or what he should do, they told him they could not help and Czub would have to make the decision on his own. (169). Czub never filed any criminal charges against Mihaljevich. (170). On April 16, 2014 Czub submitted a memo to his supervisor, Lieutenant Meeder, stating that he did not want to file charges against the other ISP trooper involved. (170).

In August 2014, Czub was offered a MASA agreement, which he signed on August 23, 2014. (170-171). Czub met with the acting lieutenant at the time, Hodgkin, regarding the MASA. (171). Hodgkin summarized the purpose of the MASA agreement for Czub. (171). Czub thought the agreement was something where he admits fault and wrongs and, by doing so, his case would be closed. (171). Czub read over each violation and the recommendation for how many days off he would get. (171). If he agreed with the violation and recommendation, he would sign off on it.



(171). Czub agreed that what he did was wrong and signed off, and he took the five-day suspension. (171-172). Czub admitted to the improper use of the MDC or LEADS, the computer software, the improper use of an official vehicle, his squad car, and conduct unbecoming. (172). As a result of all these violations, Czub received a five-day suspension as that was what he was offered. (172). Czub received a negotiated official disciplinary action letter as a result of the MASA agreement. (173).

Since this case, Czub has been under investigation in another case wherein he disclosed LEADS information. (173-174). The information was never exchanged for sex. (174). Czub disclosed LEADS information to one woman. (174). The allegation that he was disclosing LEADS information was that he was having sexual intercourse on duty. (174). The allegation was not that he was exchanging LEADS information for sex. (175). As alleged, it was to tell the woman if her license was valid or expired, but it was never in exchange for sex. (175). Czub gave a criminal interview in that case, was read his Miranda rights, and was interviewed about the subject. (175). Czub was criminally interviewed for an allegation which consisted solely of disclosing LEADS information to a woman who wanted to know if her license was suspended and he never had sex with her for LEADS information, as the allegation was not proven. (175-176). Czub never received a MASA for the second incident. (176).

Czub knew that some of the messages on March 24, 2014 were deleted before he entered the house but he did not know if every single one was. (176-177). The last message Czub sent was that he was at the house and he did not recall if that message was deleted in his squad car or when CPD gave him back his cell phone. (177).

Czub was a trooper for seven years at the time of the incident. (177). Czub did not have enough information to know that if the Chicago Police Department arrived to a scene of an incident he was involved in it would get to Czub's supervisor. (177). Czub was not thinking about it getting to his supervisor. (177). When the incident happened and he was told that no



charges were going to be pressed, he thought that nothing was going to be investigated. (177-178). Czub agreed in hindsight that some of the alleged text messages would be favorable to his allegations. (178). Czub deleted the messages because he deleted every single message he received between himself and Monica. (178). Czub agreed that the alleged black chair with the note would also be important. (178). Czub did not recall if he told the Chicago police officers about the chair. (178). Czub wrote the black chair in his fact-finding memo. (178). Czub did not recall the conversation with Lieutenant Renaud and did not know if he told her about the black chair. (178-179). Czub was never informed that someone was going to go back into the house to look for the alleged black chair and note. (179).

On redirect-examination, the Illinois State Police never had possession of Czub's text messages for WhatsApp because they took his cell phone after the incident and after Czub had deleted the messages. (179-180). Czub's fact-finding memo was directed to his lieutenant and he mentioned the black chair in the memo. (179).

Czub was punished on the charges stemming from giving LEADS information to a woman. (181). Czub was punished for a second charge of conduct unbecoming, which had a minimum twenty days. (181-182). Czub was not charged with a second violation of LEADS because the prior was more than three years ago and it could not be used against him. (182). Czub had a second charge of improper conduct and not being on his assigned post during his shift. (182). Czub did twenty days for the entire incident because the conduct unbecoming was his second offense. (182). Czub received punishment for LEADS based on not being on his assigned patrol. (183).

On recross-examination, Czub could not be charged with LEADS inquiries because it happened more than three years ago and they could not file anything with the Merit Board. (184). Czub did not recall the date or time that he was not on his assigned post. (184). It was a separate incident from LEADS but it was based on the same case, separate incidents were grouped into

one group of discipline. (184). Not being on the assigned patrol happened within the three-year period where Czub could be charged. (185). Factually, there were two different instances. (185). When Czub was not on his assigned patrol for the incident within three years, he went to the woman's house for the purpose of sexual activity while he was on duty. (186). Czub received two charges for the same incident. (186). Czub received a twenty day suspension for going to a woman's house while on duty and having sexual intercourse with her within the period of the last three years. (186). Czub is not currently under investigation for anything. (186-187). The second incident occurred before the March 24, 2014 incident, but the investigation occurred after. (187-188). Czub believed the first incident occurred in 2013 and involved the same woman who Czub testified that he was not giving LEADS information to in exchange for sex. (188).

**JOHN MCGOVERN**  
**(Called in Department's Case (Pgs. 189-203))**

John McGovern has been with CPD for twenty-three years and is assigned to the eighth district. (189-190, 195). McGovern had an independent recollection of being called to Mihaljevich's house. (190). McGovern was working a beat car, he was alone, and he was in uniform. (190). He responded to a call of either breaking and entering or a burglary in progress at an address of sixty-two-something Mason Avenue. (190). When McGovern arrived on the scene, he observed Czub naked and in handcuffs. (191). He also observed another ISP officer, Mihaljevich, armed with a weapon, who had a duty rig for a police officer. (191). McGovern started to try to find out what had occurred. (191). Officers Kulbida and Engelhardt were also at the scene, along with Sergeant Flores. (191). There was another Chicago police officer, whom McGovern did not know, and whom he believed was off-duty. (191).

McGovern spoke to Czub to try to see what happened. (191). Czub explained that he received a text message to come over to the residence and enter the front door. (192). McGovern believed that Czub was to enter the residence, take off all his clothes, and go to a back bedroom. (192). McGovern also spoke to Mihaljevich. (192). Mihaljevich wanted Czub arrested for

breaking and entering into his residence. (192).

After speaking with both troopers, the Sergeant directed McGovern to talk with Czub about what had just occurred. (192). McGovern talked amongst the other Chicago police officers to figure out what was going to happen. (192). McGovern discussed with his superior the conversation he had with Czub. (193). The Chicago police officers determined that no one was going to be arrested. (193). The Chicago police officers came to this conclusion because two police officers were involved. (193). What happened was unacceptable but the Chicago police did not want to get involved in a situation like this involving two law enforcement officers. (193).

McGovern has been a police officer in the precinct where Mihaljevich's home is for approximately five years. (195). McGovern would not leave the door unlocked in that neighborhood. (195).

On cross-examination, McGovern worked for special operations for approximately ten years, before district eight. (195). When McGovern arrived, Czub was naked and he was between the kitchen and living room, right inside the doorway of the front door. (196). McGovern lives in the general area of Mihaljevich's neighborhood. (196). The houses on the block are typical and similar with about thirteen houses on a city block. (196). The layout of Mihaljevich's house is a little different from McGovern's, but city houses are all similar. (196). McGovern recalled a hallway, but he did not remember any dimensions or other details of the hallway, just some sort of hallway. (197). McGovern did not recall seeing any chair in the hallway. (197).

McGovern's primary duty on the scene was to speak to Czub and Sergeant Flores spoke with Mihaljevich. (197). It was determined that Czub was a trooper through basic questions such as what was Czub doing there, and what did he do for a living. (197-198). McGovern never saw Czub's ID. (198). McGovern saw an Illinois State Police vehicle outside that was running. (198). The ISP vehicle was an SUV. (198). The car was either a house off or one house north and it was

on the west side of the street. (198). McGovern did not recall if there was a handicapped parking area at that location. (198-199). McGovern did not recall seeing a regular ISP squad car. (199).

McGovern did not see the text messages that told Czub to come to the residence, go through the front door, and undress. (199). McGovern did not recall if he asked to see them or if Czub volunteered to show the messages. (199). McGovern recalled being interviewed by DII and there is no mention in the summary of the interview about Czub stating there was a chair outside the hallway with a note. (199-200). McGovern did not recall Czub saying anything about the chair or the note. (200). McGovern believes that if Czub would have said that to him, he would have reported it to DII. (200). No arrest was made and it was McGovern's opinion that because this event involved two troopers it should be handled in-house. (200).

McGovern is familiar with the Chicago Police Department incident-reporting guide. (200). It is a document used for case reporting and there is a guide to draw from depending on what the incident is. (201). There does not need to be an arrest in order to issue a report and reports are routinely issued in domestic types of situations. (201). No report was done in this situation because the Chicago police officers felt that they should take care of it themselves. (201).

On redirect-examination, McGovern did not recall there being a canine in the SUV vehicle. (201). McGovern stated that had a crime been committed that day, an arrest would have been made even though it was between ISP personnel. (202).

On recross-examination, McGovern's opinion was that they should have handled the issue themselves. (202). He had the impression that it could have, and would have, been gladly settled that day. (202). If there was a crime clearly committed that day and an arrest was warranted, McGovern would have made an arrest. (203).

**MICHAEL KULBIDA**  
**(Called in Department's Case (Pgs. 203-215))**

Michael Kulbida has been a Chicago police officer for twenty-two years and he is



assigned to the eighth district. (204). Kulbida had an independent recollection of the March 24, 2014 incident. (204). Kulbida got a call to go to Mihaljevich's address and that they were holding a naked man in his house. (205). Kulbida and McGovern arrived on the scene and entered the residence. (205). Czub was naked, handcuffed, on his knees, with his hands behind his back. (205). Sergeant Flores and Officer Engelhardt also showed up to the scene. (205). At the scene, the homeowner, Mihaljevich, and an off-duty Chicago detective, Eigenbauer, were also present. (205).

When Kulbida arrived at the scene, he talked to Eigenbauer who wanted Kulbida to have Czub arrested for criminal trespass to a residence. (206). Kulbida explained to him that Czub could not be locked up because he was lured into the residence through text messages that were sent to his phone. (206). Kulbida got the information about the text messages from Mihaljevich and Czub. (206). Kulbida spoke to Mihaljevich and Mihaljevich told him that his wife was supposed to go to school that day but she did not want to go. (206). Mihaljevich talked her into going. (206). His wife left her phone in his car and she started to receive text messages from Czub. (206). Mihaljevich told Czub to come to the residence and the front door would be open. (207). Mihaljevich then said once inside, Czub was to get naked and put his clothes on the kitchen table and "I'll have a surprise for you when I come downstairs." (207). Kulbida also spoke to Czub on the scene. (207). Czub told the police officers that he met Mihaljevich's wife on fling.com and that they usually go to a hotel in Countryside for their afternoon rendezvous. (207). Kulbida recalls that Mihaljevich was wearing gray sweatpants and his state trooper gun belt but he could not remember what color shirt he was wearing. (207). After Kulbida spoke with both troopers, Sergeant Flores showed up on the scene. (207-208). No arrests were made. (208). Kulbida has worked in the eighth precinct for seven years. (208). Kulbida would not advise people to leave their door unlocked if they lived in that precinct. (208).

On cross-examination, Kulbida heard most of the conversations from Mihaljevich and

Czub by overhearing conversations they had with other officers. (208-209). Kulbida never spoke to any of the parties directly. (209). Kulbida heard Czub state that he was invited to the house and told to come in and undress. (209). Czub was telling this to Officer McGovern. (209). Kulbida never heard McGovern ask to see any of the text messages. (209). None of the Chicago police officers at the scene asked to see any of Czub's text messages. (209). Kulbida's opinion was that Czub was lured over there and this was what he heard Czub tell McGovern. (209-210). Kulbida was sure he overheard Mihaljevich speak to Sergeant Flores. (210). Kulbida was not sure what Mihaljevich said while he was at the scene. (210).

Mihaljevich was wearing his duty belt with the gun in his holster. (210). Kulbida never saw him point his gun at Czub. (210). McGovern was in charge of this investigation for the Chicago Police Department and Kulbida was his backup. (210). Sergeant Flores took over when he showed up based on his rank. (210). Kulbida overheard Czub say he was supposed to put his clothes on the kitchen table. (210-211). Czub was naked when Kulbida arrived. (211). McGovern unhandcuffed Czub and gave him his clothes. (211). Kulbida believed McGovern got Czub's clothes from the kitchen table. (211). Kulbida did not recall anything about Czub stating he had seen a note on a chair in the hallway outside the bedroom. (211).

Kulbida was not familiar with the layout of Mihaljevich's home because he was just in there one time. (211-212). Kulbida lives in the same neighborhood, but the houses are not the same in the neighborhood. (212). Mihaljevich has a two story and Kulbida has a single family. (212).

Kulbida recalled seeing Czub's ISP Tahoe outside. (212). It was parked on the east side of the street about three or four houses or parking spots off the mouth of the alley. (212). The car was three or four parking spots from Mihaljevich's house on the other side of the street. (212-213). Mihaljevich lived on the west side of the street and Czub's ISP vehicle was on the east side of the street. (213). Kulbida did not know if there were spaces available closer to the house.

(213). Kulbida did not recall if there was a designated handicap parking area directly across the street from Mihaljevich's house. (213). Kulbida did not recall if he saw a regular ISP marked squad car. (213).

The four Chicago police officers on the scene did not confer about whether to make an arrest on this situation. (213). It was Sergeant Flores decision and there was nothing for which Czub to be arrested. (213). According to what the officers were told at the scene, Czub was lured into the house. (213-214). Kulbida had no idea why none of the Chicago police officers asked to see Czub's text messages. (214). The CPD officers also made a decision that there was no reason to arrest Mihaljevich. (214).

**GABRIEL FLORES**  
**(Called in Department's Case (Pgs. 215-231))**

Gabriel Flores has been a sergeant with the Chicago Police Department for almost twenty years. (215-216). On March 24, 2014, he was assigned to the eighth district. (216). Flores had an independent recollection of the events on March 24, 2014. (216). Flores responded to a call to assist an officer for a person who had broken into his house and had disrobed. (216). After he got the call he immediately proceeded to it. (216). When Flores arrived, his officers were already in the residence. (216, 221). He observed that two officers had who appeared were the off-duty officer, Mihaljevich, in the kitchen area and the other person, Czub, in the living room area. (216-217). Flores believed Mihaljevich was an off-duty officer because he had his duty belt on, jeans, and a T-shirt. (217). In the living room, Czub had loose fitting jogging-pant type pants and a T-shirt. (217).

After Flores had a first impression of the scene, he proceeded to the kitchen area where they were talking to Mihaljevich. (217). In the kitchen, Mihaljevich started telling Flores that he had dropped off his wife at school and he had her cell phone. (217). Mihaljevich said he had been sending text messages to Czub, the person in the living room. (217). He said the text messages were in reference to coming over to the house and letting himself in the kitchen. (218).

Once Czub was in the kitchen, Mihaljevich sent a text telling him to disrobe. (218). Mihaljevich said Czub was responding via text the whole time. (218). Flores did not question anybody else at the scene. (218).

After speaking with Mihaljevich, Flores and Officer McGovern went out in front of the house and talked about the circumstances of the case. (218). Flores came to the conclusion that although Mihaljevich wanted Czub arrested for breaking into the home, in fact, Czub did not intentionally break into the house. (218). Flores concluded that Czub was lured into the house by Mihaljevich sending him text messages. (218). Flores did not specifically recall Mihaljevich asking to press charges or that he was willing to press charges. (218). Flores knew Mihaljevich spoke to the officers and he was sure that he expressed pressing charges to them, but Flores did not distinctly remember Mihaljevich telling him that was what he wanted to do. (218-219). After speaking with his officers, Flores concluded that, in fact, Czub committed no crime and he did not break into the house. (219, 227). Flores was the highest-ranking officer on the scene and it was his call not to press charges. (219). When Flores showed up Czub was already clothed and was no longer nude. (219). Flores did not believe he committed a crime because he believed that Czub was lured to the home under false pretense. (219).

Flores communicated the lack of charging the one-time naked Czub to Mihaljevich. (219-220). Flores described Mihaljevich's reaction to the recommendation of not pressing charges as accepting and said that he appeared apologetic and remorseful. (220, 221). Flores presumed that Mihaljevich was apologetic about having called the police to the scene, inconveniencing them, and getting involved in the love triangle. (220).

Flores had worked in the eighth district since January 2014. (220). He would not advise anyone who lived in that district to leave their door unlocked. (220). Flores did not tell Czub that he was not going to be arrested. (220). Flores instructed Czub to return to his squad car and stand-by. (220-221). Flores said Mihaljevich was apologetic for having called 911. (221).



On cross-examination, Flores confirmed that several Chicago police officers arrived at the scene before he did. (221). Flores stated the officers Jack McGovern, Mike Kulbida, and he believed Joe Engelhardt were the officers that arrived prior to the time he showed up. (221). When Flores arrived, Czub was no longer in handcuffs and he was dressed. (222). Flores did not have any idea where Czub's clothes were prior to the time that he dressed. (222). Flores did not himself witness where the clothes were; he based any conclusion on what the officers were telling him and what they witnessed. (222). Flores was not told where Czub's clothes were by any of the officers, he was only told that Czub was disrobed. (222).

Flores said that Jack McGovern spoke to both Czub and Mihaljevich, but he was not specifically assigned to the task by Flores. (222). By the time Flores arrived, Officer McGovern was speaking to Mihaljevich and he guessed Officer McGovern had already spoken to Czub. (222-223). Flores presumed that the determination that Czub was a trooper was made through officers speaking to Czub and Czub relaying the information that he was a trooper to them. (223). Flores said that Mihaljevich may have relayed to the officers his request for criminal charges to be filed against Czub prior to the time he learned Czub was a trooper, but Mihaljevich did not tell that to Flores directly. (223). Flores stated that the conversation asking for charges could have occurred prior to Flores arriving on the scene. (223). Flores did not recall Mihaljevich specifically asking to file any criminal charges against Czub or to make an arrest. (223-224). By the time Flores arrived on the scene it was not already determined that Mihaljevich did not want any criminal charges filed against Czub. (224). It was not determined until after Flores spoke to Mihaljevich and to his officers that no crime had been committed. (224).

Flores could not say whether the Officers on the scene were aware that Czub was saying that he had received text messages. (224). Flores did not know what Czub had told the officers. (224). Flores knew that Czub did receive text messages because he spoke to Mihaljevich directly and Mihaljevich told Flores that he was sending messages. (224). While at the scene, Flores had

information that Czub and Mihaljevich were sending text messages back and forth. (224). Flores could not tell why none of the Chicago police officers ever asked to see either Czub's or Mihaljevich's phones to look at the text messages. (225). Flores guessed it would be a practical consideration to look at the text messages to see if Czub was lured to the scene, however, Flores said Mihaljevich admitted that he sent messages directly to Czub and he volunteered the information. (225). Flores said that Mihaljevich told him that he had sent messages to Czub and that one of them indicated getting undressed and that Czub responded to Mihaljevich that he was at the house. (225). Flores maintained, if his recollection was correct, that he did not get the information about Czub getting undressed from Czub speaking with McGovern. (225-226). Flores did not personally speak to Czub. (226). Everything Flores knew about Czub was relayed to him from Officer McGovern and Mihaljevich. (226).

While Flores was at the house, there was no mention of a chair outside the bedroom or a note about getting undressed. (226). Flores is familiar with the layout of the house, but only the kitchen and living room area, not the hallway outside of the bedroom. (226). Flores lives about two miles north of the neighborhood and he does not live in a similar type of house. (227). Prior to the date of the incident, Flores did not know Czub. (227).

At the scene, Flores conferred with the other officers whether any criminal arrest should be made of either Czub or Mihaljevich. (227). It was his opinion that no arrests should be made. (227). Flores did not think Czub committed a crime nor did he think that Mihaljevich committed a crime. (227). Flores said that Mihaljevich may have had poor judgment but he did not commit a crime. (227).

Flores was of the opinion that because two troopers were involved the Illinois State Police should handle this in-house. (229). Flores recalled seeing an Illinois State Police Tahoe SUV state trooper squad car parked outside. (229). He stated that it was parked directly across the street from Mihaljevich's house, on the east side, maybe two houses north of the Mihaljevich

home. (229). There was parking closer to Mihaljevich's house either directly in front or directly in front across the street when Flores arrived. (229). Flores said it was perhaps possible that the car had been intentionally parked away from Mihaljevich's house but he speculated that there may not have been a closer spot available when that car arrived. (230). Flores did not recall seeing a regular marked Illinois State Police squad car in front of Mihaljevich's house. (230). Flores recalls the SUV squad car because he ordered Czub to go to his car and wait there but he could not say with certainty if there was a squad or patrol car as well. (230).

**GENELLE JONES**  
**(Called in Respondent's Case (Pgs. 231-274))**

Genelle Jones has been employed with ISP for eleven years. (231). She was a patrol officer in District Chicago until she moved to Division of Internal Investigations in 2011. (232, 253). Jones is in charge of investigating criminal and administrative wrongdoing with the division. (232). Jones is a case agent and is in charge of an investigation as the lead investigator. (232-233). Jones was the case agent in Mihaljevich's case. (233). Jones' duties include interviewing witnesses and preparing summaries of interviews. (233). Not all interviews are tape-recorded; typically any administrative interview is tape-recorded and this includes an interview of an ISP officer. (233). Jones did not tape-record her interviews with the Chicago police officers. (233). Jones prepared summaries of the interviews. (233-234).

On March 24, 2014, Jones went to Mihaljevich's residence. (234). She arrived at approximately 1:00 p.m. (234). When she arrived, Mihaljevich and Eigenbauer were at the residence. (234). Jones attempted to speak with Mihaljevich and conduct a criminal interview however Mihaljevich refused that interview. (234). Jones spoke to Eigenbauer that day and prepared a summary of his interview. (234-235). Eigenbauer told Jones that it was his suggestion that 911 be called. (235). Jones spoke to Czub briefly, but she did not interview him. (235-236). Czub was in his patrol car in front of the residence when she spoke to him and he was waiting for his command officers to tell him what he needed to do as far as he could leave. (236). Czub

knew he had to speak to DII investigators so he was waiting for DII to arrive. (236).

Jones did not try to criminally interview Czub. (236). Jones spoke to Czub because she had to obtain his memorandum and his cell phone. (236, 253). Jones retrieved Czub's cell phone because Czub's memorandum stated that he had evidence that would be on his cell phone. (236-237). Jones did not do any type of forensic testing on Czub's cell phone. (237). Jones did try to determine whether there were any text messages from March 24, 2014. (237). Czub did not use the text messaging option and Jones tried to retrieve the messages from the internet application that he used to text. (237). Jones was unable to obtain any text messages between Monica and Czub on March 20 or March 24, 2014. (237). Jones subsequently learned that Czub deleted the application that contained the messages and when DII tried to retrieve the app and reload it on his phone, the text messages were not stored. (237-238).

Jones did an administrative disciplinary interview of Czub as part of Czub's disciplinary case. (238-239). Jones asked why Czub deleted the text messages. (238). Czub stated that after he left the residence he did not think anything else would come of it and he deleted the text messages. (239). Without further embarrassing himself, he was trying to delete the app. (239). Czub said that Mihaljevich told him not to have any contact with him and Czub was trying to get rid of the text messages because he did not want any record. (239). Jones was under the impression the Czub did not delete the text messages until after the Chicago Police Department had arrived because Czub deleted the messages after he left the residence. (239). Czub had spoken to the Chicago Police Department officers prior to the time he deleted his messages. (240).

Jones went into Mihaljevich's house in an attempt to criminally interview him in his living room. (240). Jones did not search the house. (240). During the entire DII investigation, DII was never able to obtain any messages between Mihaljevich (Czub) and Monica on March 20 and 24, 2014. (240-241). Czub mentioned a chair outside the hallway that had a note on it but,



during the entire DII investigation, Jones was never able to locate either a chair or a note. (241). Jones did not observe the hallway outside the bedrooms while she was at Mihaljevich's home. (241).

As part of Jones' duties as a case agent, at times she will make recommendations for proposed charges when an investigation is completed. (242). Jones does not determine whether a case is conducive to the MASA settlement agreement, but she does make a recommendation to her supervisor. (242). For a case to be conducive to a MASA agreement there is a certain level of discipline that the policy violation falls within the range. (242). Depending on the officer's former record or history of violations, they could be eligible for a determination of a reduction in the summary punishment by one level based on the Departments disciplinary matrix. (242-243). It is true that if an officer agrees to a rule of conduct violation, he receives a punishment at one level less on the disciplinary matrix. (243). Levels one through three on the disciplinary matrix can be settled through a MASA agreement. (243). The highest punishment for a level three is a thirty-day suspension. (243). As case agent, after completion of the investigation, it was Jones' duty both to make a recommendation to her supervisor concerning whether the case was conducive to MASA agreement, and the specific charges she believed may be warranted based on the investigation. (243-244). Jones did both things. (244).

Jones wrote a memorandum dated March 2, 2015 to Jason Holt, Jones' master sergeant supervisor, introduced as Respondents Exhibit 2. (245). The memo is entitled "Charges for Mihaljevich." (245). The purpose of this document was to outline how the ROC violation would read in the administrative charge. (245). Supervisors instruct that when an investigation is complete the agent should include any charges that may be relevant depending upon what point the agent is at in the investigation. (245). On March 2, 2015, the Mihaljevich investigation was not yet completed. (245-246). After March 2, 2015, Jones still had to complete Mihaljevich's administrative interview, which occurred on March 5, 2015. (246).

Jones was not sure that the memo was a proposed charge. (246). She could have been writing something just to see the format. (246, 248). Jones was not sure what the purpose of this memo was. (246). The only charge listed against Mihaljevich on March 2, 2015 was a violation of A8, improper conduct punishable by four to ten days, although that is not necessarily the total context the memo would state. (246). Sometimes Jones would forward a template of something that her supervisor wanted to see. (246). Jones was not sure that this memo was a final recommendation. (247). Jones could have been sending this to her supervisor to see what the charge would look like on the investigative summary page. (247). Jones knew this was not a final determination because she does not make final determinations. (247). Jones could not have made a final recommendation at that point because she had not completed the investigation. (247).

Jones could have been asking if the case was conducive to a MASA settlement agreement, she was not sure what the purpose of the memo was because it does not have a complete context of why she wrote it. (247). Jones stated that just because the memo is typed a certain way, it did not mean that it was her recommendation for a charge. (248). In this context, she was not making a representation to her supervisor that this was a case that could be settled. (248). Even though the document asks her supervisor to present the MASA settlement agreement to Mihaljevich to try to settle the case for an A8 violation of four to ten days, she could not be making a recommendation to settle it because the case was not completed. (248). Jones does not make MASA agreement recommendations based on an incomplete investigation and at the time, the investigation was not complete because they still had yet to do the AI. (248-249). Jones could be asking her supervisor if this was how he wanted the memorandum to read. (249).

The purpose of a MASA agreement is that it is a willingness of an officer to take responsibility for the charge. (249). In doing so, the Department agrees that if the officer is willing to take responsibility they will determine one degree less of punishment. (249). Another purpose of MASA agreements could be to shorten investigations or do away with the DII

investigations completely. (249). That was not what was occurring in this case. (249-250). Jones did not decide to recommend that Mihaljevich's case be settled on a MASA prior to his administrative interview. (249-250). That is not consistent with what it says in the memo. (250). Jones did not make recommendations for MASA in this case. (250). She may have copied and pasted this and put Mihaljevich's information into the memo just to see if that was how the charge would read on the administrative investigative summary because agents have to do a lot of formatting. (250). If this were something that needed to be formatted and the charges needed to be listed out, Jones could be asking if this was how the format should read, but she did not make MASA recommendations in this case. (250-251). The memo was not sent up to all the supervisors as a MASA recommendation, it was only sent to her supervisor, Holt. (251).

As a case agent, Jones would have more knowledge than anyone would about an investigation as to what allegedly occurred. (252). Jones authored an investigative summary that had seven ROC violations, at one point there were eight, but it was reduced to seven. (252). Jones did not have that document with her. (253). Jones has been with DII since October 2011. (253). She had been a case agent on a case prior to Mihaljevich's case. (253).

On cross-examination, When Jones was at the scene she retrieved Czub's memo in which he said there was a note involved. (253). When there is a MASA, Jones has to send it up the chain [of command]. (254). If Jones made an actual MASA recommendation she would send it to her master sergeant who would then send it up to the lieutenant, the commander, the captain, and the colonel's for approval. (254). The email that Jones was questioned about was sent prior to the administrative interview. (254). There were other charges that stemmed from the administrative interview. (254). There was a charge of unlawful restraint, false accusation of a misdemeanor, five counts of lying in the administrative interview, excessive force, conduct unbecoming of an officer, and bringing the Department into disrepute. (255). The charge about lying in the administrative interview could not have been suggested until after the interview

occurred. (255).

Jones was presented with the investigative summary, marked as Department's Exhibit No. 5. (255-256). The purpose of the investigative summary was to give a summation of the investigation and a recommendation up the chain [of command] to the supervisors for consideration. (256). The investigative summary was written on March 17, 2015. (256). The investigative summary was Jones' final recommendation in the case and it had all the signatures. (256). Jones went over an extensive list of questions when she conducted the administrative interview and made recommendations based on how the questions were answered. (257).

After the administrative interview, Jones felt that Mihaljevich was untruthful with some of the evidence they had gathered. (257-258). This led to charges of lying in the administrative interview. (258). Jones also determined, through Mihaljevich's admission of detaining Czub with his weapon and handcuffing him, that he committed the violation of aggravated unlawful restraint. (258). Jones determined that Mihaljevich used excessive force in detaining Czub after he had been told who he was and after he could reasonably ascertain that this was a person who he had communicated with less than two hours ago and invited him to this residence. (258). Jones determined that Mihaljevich's actions brought the Department in disrepute. (258). The investigative summary was a summation of Jones' final recommendations for this case. (258). The email that was referred to on direct examination, Respondent's Exhibit 2, would not have been Jones' final determination. (259).

On redirect-examination, Jones referred to the local state's attorney for possible criminal charges for aggravated unlawful restraint. (260). The state's attorney refused to file any criminal charges against Mihaljevich. (260). Czub's administrative interview was conducted prior to the date of the March 2, 2015 email. (260). Jones had Czub's version of what allegedly occurred before March 2, 2015. (260). Other than the allegations of Mihaljevich being untruthful in his administrative interview, nothing changed between the dates of March 2, 2015 concerning Jones'



knowledge of the case and the date of Mihaljevich's administrative interview. (260-261). On March 2, 2015, when Jones prepared the email to Holt, she did not recommend any charges of aggravated unlawful restraint. (261). Jones also did not make any recommendations for false accusations of a misdemeanor, which was how she knew that this was not a final determination because there were other charges being considered as well. (261-262). The charge of false accusation of a misdemeanor was not included in the memo on March 2, 2015. (262). Knowing what Czub said, based upon his administrative interview, Jones did not recommend to Holt that any charge be filed for excessive force. (262). Jones said the email was not a charge to her supervisor because there was no heading, no "sir, this is for your review," which she would have included if she was making a recommendation because she would be more formal in that recommendation to her supervisor. (262). The top line that says "charges for Mihaljevich" just meant that was the subject the memo, but Jones believes that it was just for formatting because it was before the administrative interview. (262-263). Jones wanted to charge Mihaljevich with obstruction for lying to her. (263). Jones mentioned the MASA agreement prior to Mihaljevich's administrative interview because she was trying to see if the format was correct. (263). There was no obstruction charge and she was considering that as well. (263).

When Jones compiles an investigative summary, the last page with the administrative charges takes on different physical formats depending on the case. (263-264). The way the paragraphs are formatted and the use of bold, whether it is written as a paragraph, or if it is just listed changes. (264). The administrative charge pages take on a different format depending on the case. (264). Jones put this in an email and she thought she was just asking what format the page is supposed to look like and how the charges should look for Mihaljevich. (264). She only put one charge to see if it was the correct format. (264). There was always a longer list of charges for Mihaljevich. (264). Jones never recommended just charging Mihaljevich with one ROC violation. (264). Jones did not say that this was her final recommendation, she just cut and

pasted charges and put a format there. (265). This was not an inclusive list of all the ROC violations being considered for Mihaljevich. (265).

Not all of the charges Jones was considering for Mihaljevich qualified for the MASA agreement. The level four and seven charges came after the administrative interview. (265). If Mihaljevich had come into the administrative interview and admitted, some of the level seven charges would not have been considered. (266). The aggravated unlawful restraint is above a level three. (266). Jones does not recall if she was considering that specific charge prior to his interview. (266). The false representation of a misdemeanor is above a level three. (266). Jones does not believe the memorandum was a final and complete summation of all the charges she was considering. (266).

Jones believes that Mihaljevich's admission that he used his weapon, told the officer to freeze, and handcuffed him while he was naked in his home showed that Mihaljevich committed aggravated unlawful restraint. (266-267). Further, Czub said he was a trooper after Mihaljevich invited him there and he detained him saying he was not free to leave. (267). Mihaljevich used his weapon and detained Czub knowingly and without justification. (267). Mihaljevich said in his statement that he did not invite Czub to come into his home. (267). Jones has absolutely no text messages, which invited Czub to come to the residence. (267). Mihaljevich stated that Czub entered without permission, was naked in his house, and that Czub had no ID on him. (267-268). As an Illinois State Police officer you are supposed to carry ID at all times. (268).

Jones had nothing to do with Czub's MASA agreement. (268). Jones had no knowledge why Czub only received a five-day suspension, but she has read the statement. (268). Jones was not aware that in LEADS inquiry cases officers typically get at least fifteen to thirty day suspensions and Jones has not had any LEADS inquiry cases. (268).

Prior to this case, Jones estimates that she has been involved in five DII disciplinary investigations involving Chicago or Illinois police officers. (270). Jones has not made

recommendations to her supervisor as to proposed charges in all of those cases. (270).

The recommendation Jones made in the email was interim in nature because she had not yet done the administrative summary of Mihaljevich. (270-271). The administrative interview of Mihaljevich occurred three days after the memo. (271).

**DEBORAH SIMENTAL**  
**(Called in Department's Case (Pgs. 274-382))**

Deborah Simental is a Colonel with the Illinois State Police and she has overseen the Division of Internal Investigation since January 1, 2014. (274). Simental's northern command was responsible for investigating the complaint filed against Mihaljevich and her role specifically was to oversee the investigation. (275). Simental is familiar with the Illinois State Police departmental rules of conduct and disciplinary actions. (275). She uses the rules and disciplinary actions everyday throughout the course of normal business conducting internal investigations involving both sworn and civilian employees. (275-276). Simental has been involved in hundreds of internal investigations. (276).

Simental has reviewed the administrative charges presented against Mihaljevich and the applicable administrative rules in place on March 24, 2014. (276). The administrative rules were available to Mihaljevich. (277). In Simental's opinion, Mihaljevich's conduct violated department rules. (277).

The first charge against Mihaljevich is the violation of state law aggravated unlawful restraint, violating Rule of Conduct 002 paragraph III.A.1. (278). The basis of the charge was a violation of state law aggravated unlawful restraint. (278). The ROC used by DII is for conformance to state, federal, and local laws. (278). On or about March 24, Mihaljevich committed the offense of aggravated unlawful restraint, a class three felony, when he invited Czub to his residence under false pretense to enter through an unlocked door and get undressed. (278). Mihaljevich then knowingly detained him and held him with his duty weapon. (278). The possible discipline for this violation is a level seven termination offense because the state law

identified is a class three felony. (278-279).

The second charge against Mihaljevich is false accusations of a misdemeanor, Rule of Conduct 002 paragraph III.A.37. (279). The basis for charging Mihaljevich with this rule of conduct violation was that on March 24, 2014, he made an accusation of a misdemeanor and withheld information from the Chicago Police Department. (279). When the Chicago Police Department responded to his residence Mihaljevich told the officers that he wished to sign a criminal complaint against Czub for breaking and entering, essentially criminal trespass to his residence. (279). The possible discipline for this violation is a level seven, which includes up to termination. (279).

The third charge against Mihaljevich is for failure to truthfully answer questions in an administrative interview, Rule of Conduct 002 paragraph III.A.41c. (280). The basis for this rule of conduct violation was that on March 5, 2015, during Mihaljevich's administrative interview there were five instances where he was untruthful. (280). The first instance was when he denied sending a text message from his wife's phone to Czub to come inside his residence through an unlocked front door and subsequently undress. (280). The second instance was when he denied telling the Chicago police officers who responded that he sent a text message from his wife's phone to Czub to come inside his residence through the unlocked front door and proceed to undress. (280). The third instance was when Mihaljevich denied leaving a note that instructed Czub to remove his clothing. (280-281). The fourth instance was when Mihaljevich denied telling the Chicago Police Department officers that he observed Czub arrive at his residence in Czub's state issued squad car. (281). The fifth instance was when Mihaljevich denied apologizing to the Chicago police officers who responded to the scene for calling 911 under false pretenses. (281). The possible discipline for this violation is a level seven, which includes up to termination. (281). A single violation in any of the first three charges would be sufficient to discharge Mihaljevich. (281).



The fourth charge against Mihaljevich is the use of excessive force, Rule of Conduct 002 paragraph III.A.43. (281). The basis for this charge was that on March 24 Mihaljevich used more force than reasonably necessary, in accordance with law and department policy and procedure, when he drew his weapon on Czub. (282). Mihaljevich subsequently handcuffed Czub and detained him as a result of Czub's responding to the written message and/or text messages for Czub to come to Mihaljevich's residence. (282). The possible discipline for this charge, being a first offense, is a level four misconduct, which is thirty-one to forty-five days. (282).

The fifth charge against Mihaljevich is unlawful arrest or seizure, Rule of Conduct 002 paragraph III.A.44. (282). The basis for this charge against Mihaljevich was that on March 24, 2014, Mihaljevich seized [and] detained Czub, which he knew was not in accordance with law and/or department procedures. (282-283). The possible discipline for this violation, being a first offense, is a level three misconduct, which is fifteen to thirty days. (283).

The sixth charge against Mihaljevich is bringing the Department into disrepute, Rule of Conduct 002 paragraph III.A.8. (283). The basis for this charge against Mihaljevich was that on March 24, he lured Czub to his residence, detained him at gunpoint, handcuffed him, and called 911 when no emergency actually existed, indicating that he had a naked man in custody inside of his residence. (283). Chicago police officers responded to a call of breaking and entering at the residence and Mihaljevich attempted to have Czub arrested for criminal trespass to his residence. (283). The possible discipline for this violation, being a first offense, is a level two misconduct, which is four to ten days. (284). Simental added this particular ROC was identified in regard to the totality of the circumstances that were involved, but more so because of the actions of Mihaljevich involving another agency and broadcasting his actions outside of the state police. (284).

The seventh charge against Mihaljevich is conduct unbecoming an officer, Rule of Conduct 002 paragraph III.A.7. (284). The basis for this charge against Mihaljevich was his

actions in totality, on March 24, 2014, when he lured Czub to his residence under false pretense, held him at gunpoint, instructed him to undress, and called 911 when there was no emergency. (284).

Simental is familiar with the MASA procedure. (285). MASA is available to officers who have committed lower-level transgressions, level three violation or below, and it is not offered for anything higher or for any allegations of criminal misconduct. (285). MASA allows the Department not to expend a tremendous amount of resources if the employee involved comes forward and admits to the allegations levied against him or her in totality. (285). MASA is not a part-and-parcel system. (285). MASA allows employees to take responsibility, admit to their actions, and move forward. (285-286). MASA is beneficial to the officer as well as the Department. (286).

Simental does not make the ultimate decision in regards to discipline. (286). For level four and higher [violations], a disciplinary review board convenes and the case is presented to the board. (286). Simental is a voting member and chairperson of the board because of her position with internal investigation. (286). The other three voting members on the board are three colonels and/or their designees. (286). Once the case has been presented, the board makes a recommendation to the director of the state police for discipline involving the particular employee. (286). The board is recommending termination because of the three level seven violations. (287).

On cross-examination, Simental reviewed the investigative case file for the DII investigation in preparation for her testimony. (287). Simental was aware that Czub was offered, and accepted, a MASA agreement for a five-day suspension. (287-288). As part of the investigation, individual case agents do not make a recommendation as to whether a case is appropriate for a MASA agreement. (288). Simental was not aware that Jones recommended to her supervisor, Holt, that this case was conducive to MASA. (288). Simental was shown

Respondent's Exhibit 2. (288). After an investigation, it is the case agent's responsibility to review the rules of conduct and provide some insight as to what they think might be appropriate. (289). Simental did not know why Jones made recommendations [in her memo] for only one charge of violation of A8, improper conduct, three days prior to the administrative interview. (291). DII was not considering offering Mihaljevich a MASA settlement agreement prior to his administrative interview. (291). Simental did not know why Jones made the recommendation and she was not made aware of the recommendation. (291).

Jones did not make the final recommendation for charges in this case because she identified the rules of conduct violations, which are reviewed by the chain of command up to, and including, Simental as well as a review by the legal office. (292). Lieutenant Marcus Gibson was not the final person in the process and he did not make the recommendation for the final proposed charges after the administrative interview. (292). Simental was shown Respondent's Exhibit 3, an email dated April 14, 2015, from Marcus Gibson to Holt. (292). Gibson is the investigative commander in the DII Tinley Park office and Holt is a master sergeant assigned to DII in the northern command, Tinley Park office. (292-293). Gibson's email made recommendations to Holt. (293). Simental did not want to guess why Gibson was making recommendations, but said he could have been having discussions and Gibson memorialized the discussions in an email. (293). Simental had not seen the email before. (293).

The charges affixed at the end of the investigative summary were the proposed charges sent to the disciplinary review board at its meeting on May 16, 2015. (295). The disciplinary review board made a recommendation to the director as to the proper discipline. (295). The recommendation is based upon the investigative summary presented to the Board. (295). The officer is allowed to come in and make a statement before the Board. (295). The officers work unit commander comes in before the Board and makes a recommendation to the charges, gives an overview of the type of employee the officer is, and give the officers work history and

performance. (295-296). The four colonels voted on the requested punishment and Simental was not certain the decision [to terminate] was unanimous, but she believed it was. (296).

Simental was shown Respondent's Exhibit 4, an email between Michael Zarbonia and Tad Williams. (296-297). Michael Zarbonia is a retired colonel of the division of operations. (296). Based on the email dated May 5, 2015, it was true that Zarbonia did not attend the disciplinary review board meeting and Colonel Tad Williams sat in for him. (297). Williams was the lieutenant colonel under Zarbonia at the time. (297). Based on the email between Zarbonia and Williams, Simental would say that it was possible that the recommendation was not unanimous for termination. (298-299).

Simental was aware that Czub sent a memorandum to his supervisors that he did not want to proceed with criminal charges against Mihaljevich and that was documented in the case file. (299). The Department still referred the case to the local State's Attorney even though the witness did not want to proceed with criminal charges due to the seriousness of the allegations. (299-300). Simental was aware that the State's Attorney refused to file criminal charges. (300-301).

The rules of conduct are based upon the Department's disciplinary matrix; each rule of conduct has a level of discipline associated with it. (301). The disciplinary matrix has been in effect since between 2005 and 2007. (301). Simental did not know how the matrix was created. (301). Simental had no idea that the Merit Board or Trooper's Lodge 41 were not involved in the creation of the disciplinary matrix. (301). Simental has not attempted to determine how the matrix was created. (302). Command officers put the process in place before Simental was in the position that she is currently in to weigh in on it. (302). Simental agrees that she is the Department's designated witness to testify in termination cases. (303). Simental's responsibility and position now is that the disciplinary matrix is used according to ISP policy and procedure. (303). She was not part of any of the committees or discussions that put the matrix in place, but



her current role is to ensure that the process is used. (303-304).

Count I alleges a violation of state law aggravated unlawful restraint. (304). Simental believed that the Department has proven the charge based upon the interviews involving Czub, the on-duty Chicago police officers that responded to the 911 call, Mihaljevich's off-duty Chicago police officer neighbor, and the administrative interview with Mihaljevich. (304). The Chicago police officers, between their interviews with Czub and Mihaljevich, lead Simental to believe that Mihaljevich lured Czub to his residence under false pretense, through an unlocked door, instructed him via a note left on a chair to get undressed, and then detained Czub by holding him at gunpoint and handcuffing him.(304-305). There was never a text message found stating Czub was invited over or supposed to get undressed. (305). Simental understood that the text message was not found because the application used to send the message did not save the message to a server once a message had been deleted; once a message was sent, it was gone. (305). The note that was on the chair was never found and Simental did not know if the chair was there. (305-306). ISP personnel were on the scene and they responded after the Chicago Police Department, but Simental did not know whether any of the ISP personnel conducted any type of investigation to determine if there was a chair and note. (306). Simental only knew that ISP did not have the note. (306).

The Chicago police officers said that Mihaljevich essentially admitted that he lured Czub under false pretense via a text message through his wife's phone, instructed him to come inside the residence, and subsequently undress. (307). Mihaljevich also pointed his firearm at Czub, detained him from leaving, and handcuffed him. (307). Mihaljevich denied that he lured Czub under false pretense, instructed him to come inside, and pointed his gun at Czub, instead stating during his interview that he never invited Czub into the residence. (307). Czub deleted either the application or the text messages from his phone that day while he was seated in one of the officer's vehicles after the Chicago Police Department had arrived at the scene. (307-308). An

officer on the job for seven years being investigated by another police agency would expect that the information may be relayed to that officer's supervisor or DII. (308).

Count II alleges a false accusation of a misdemeanor. (308). It was Simental's understanding that Mihaljevich only requested that Czub be arrested prior to the time he learned Czub was a trooper and he made a statement to that effect to the Chicago police officers. (309). The Chicago police officers asserted, after they conducted their investigation, that there was no crime, and Mihaljevich, during the interview with one of the Chicago police officers, had also stated that he saw Czub arrive in a state police vehicle to his residence. (309, 318). The Chicago police officers were of the opinion that there was no crime for breaking and entering because Mihaljevich essentially admitted to them that he lured Czub there under false pretenses using his wife's cell phone. (310). The Chicago police officers did not proceed with their investigation and they did not arrest Mihaljevich for aggravated unlawful restraint. (310). Chicago police was the investigating agency on the scene at the time and they determined there was no crime committed by Czub or Mihaljevich by not moving forward. (310). DII continued with the investigation and presented a file to the State's Attorney's Office for review, and the State's Attorney's office declined to pursue criminal charges. (311). The file sent to the State's Attorney was a criminal investigative summary, and it did not include the transcript of Mihaljevich's administrative interview. (311-312). The file sent to the State's Attorney's Office was a synopsis of the investigation up to that point. (312).

Count III of the complaint alleges that Mihaljevich failed to truthfully answer several questions during his administrative interview. (312). The first question Mihaljevich answered untruthfully was when he denied sending a text message from his wife's phone to a subject, later identified as Czub, to come inside his residence through the unlocked front door and/or to undress. (312). Since no text messages were retrieved, DII believed a combination of Czub's statements as well as the Chicago Police Department officers that DII interviewed. (312). At

least two, if not three, of the four officers overheard or had been told that Mihaljevich admitted he used his wife's cell phone to send Czub a text message. (313). One officer interviewed Mihaljevich, so he had firsthand information and that information was relayed to the officer who conducted the on-scene interview with Czub. (313).

Czub has received reportable discipline during the last five years. (314). Czub was disciplined in another investigation and Simental recalled that he had received a fifteen to twenty day suspension, but did not know the exact length or the specific charges. (314). Simental recalled some of the case, but did not know what rule of conduct violations were sustained in the twenty-day discipline. (314-315). She would not say if he received part of his discipline as a result of having sexual relations with an individual while he was on duty without having reviewed the specific charges in the case. (315). Simental did not recall that Czub was under a separate criminal investigation outside of the investigation for sexual relations. (315). Simental did not recall that Czub was criminally interviewed after this Merit Board case was filed for a situation involving improper use of LEADS. (316). Simental supposed that this could weigh on the determination of credibility of witnesses. (317).

Returning to the second charge, involving Mihaljevich sending a text message to Czub, Mihaljevich denied sending a text message, and no text message was ever recovered. (317-318). In the third charge, Mihaljevich denied leaving a note advising Czub to remove his clothes and that note was never found. (318). Based on interviews with Chicago police officers, Simental believed that Mihaljevich saw Czub's vehicle arrive at his residence. (318). Mihaljevich stated during his administrative interview that he was in his laundry room, in the basement, at the time Czub entered the residence. (318). Simental was not aware of Flores' testimony that Mihaljevich apologized to him prior to the Chicago police officers leaving his residence. (319). During the administrative interview, Mihaljevich denied that he apologized to the Chicago police officers for calling 911. (320).

Count IV of the complaint is for use of excessive force. (320). Simental understood that Mihaljevich stated that he drew his weapon and handcuffed Czub because Czub entered Mihaljevich's residence uninvited. (320). Mihaljevich's weapon was kept in his basement in a locker of some sort prior to the time Czub entered his residence. (321). Czub entered the residence without ringing the doorbell or knocking because he indicated during his interview that the door would be open and he was to go inside. (321). Simental understood that Mihaljevich drew his weapon and pointed it at Czub. (322). Simental believed this was not a proper use of force when you invite someone over. (322). Simental's opinion was that Mihaljevich not only invited Czub over, but the investigation showed also that he instructed Czub to come in through an unlocked door. (322).

Simental did not know if Czub had his identification with him when he arrived at the residence. (323). Simental did not know if Czub's ID was in his clothes or left in his vehicle. (323). ISP officers are supposed to carry their IDs at all times, while on and off duty. (323). Simental did not know if Czub had his ID on his person, but depending on the circumstances, she does not know if it would be a violation of ISP policy to not have ID on his person. (324). Simental does not walk around her residence with ID, but when she leaves her residence she has her ID, although that does not mean it is always physically on her person. (324). Czub did not have any clothes on so he was not in the position to show ID when Mihaljevich handcuffed him and Czub repeatedly told him he was a state trooper. (325). Simental did not remember if Czub gave a statement in his DII interview that he did not have his ID on him at that time. (325).

Simental believed Czub indicated he was on a K-9 maintenance code at the time he went to Mihaljevich's house. (325). A K-9 maintenance code is for officers who are assigned canines and they are allotted a certain amount of time per day to take care of the canine or vehicle maintenance that goes with the canine. (325-326). Simental does not remember if Czub was specifically on a code via a radio communication but he indicated during his interview that it was



his intent to take his canine to the park. (326).

Count V of the complaint is for unlawful arrest or seizure. (326). Mihaljevich indicated that he did not place Czub under arrest. (326). Mihaljevich detained Czub. (326). Mihaljevich never made any type of search. (326). Simental said Mihaljevich made a seizure when he detained Czub. (326-327). Based upon the rule of conduct, seizure does not relate to the seizure of property, Simental said that it was seizure of an individual when Mihaljevich detained Czub by gun and handcuffed him. (327). Simental equates the word seizure with detainment. (327). Simental does not believe the word seizure in the rule of conduct would relate to the seizure of suspect's property or illegal seizure of drugs, though she supposed it could. (327). Simental was referring to Czub being detained at gunpoint and handcuffed when she said seizure. (327).

Count VI of the complaint is for bringing the Department into disrepute. (328). Simental was not aware of any newspaper printing what occurred on March 24, 2014 at Mihaljevich's house. (328). Simental was not aware of any television coverage of the events. (328). Simental could not recall if Czub was charged with A7 or A8 in his MASA agreement. (328-329). Simental was shown Respondent's Exhibit 1, Czub's disciplinary letter, and Czub was charged with A8 for bringing the department into disrepute. (329). Czub allegedly brought the Department into disrepute by responding to a text message to go to the residence of another trooper's wife for a sexual encounter, driving his state-issued squad car to the residence, entering the residence, and undressing where he was confronted by the trooper who held him at gunpoint until the Chicago Police Department arrived. (330).

Simental did not have any input into Czub's five-day suspension. (330). Simental does not believe it is disparate treatment in this case where the Department is seeking termination for Mihaljevich, and Czub, who destroyed potential evidence in the text messages, only received a five-day suspension. (330-331). Mihaljevich pointed his weapon at Czub and gave him instructions to kneel and Czub was subsequently handcuffed. (331). Simental did not recall, by

being informed or throughout reading the DII investigation, that the weapon was pointed at Czub any other time after being handcuffed and Mihaljevich's weapon was only out of the holster for the short period before Czub was handcuffed. (331-332). Simental did not recall if Mihaljevich asked Czub for an ID. (332).

Simental did not review Mihaljevich's personnel file. (332). An officer's prior work history is something that the Department should consider when determining punishment and that information was conveyed to the disciplinary review board by Mihaljevich's commander. (332). Mihaljevich's commander was Captain Dave Byrd. (332-333). Simental believed Mihaljevich was described as a less than average employee. (333). Simental did not know at what point Mihaljevich may or may not have directly reported to Byrd. (333).

Simental did not review any precedent cases because she was not presented with any cases. (333). The precedent cases were shown as Respondent's Exhibit 5. (334). Simental was not aware, and had never heard, that the Department's disciplinary matrix was based in part on the precedent cases. (335). In July 1993, Simental was a trooper on patrol. (335). Simental was not aware of the July 23, 1993, disciplinary action of Special Agent Bradley Cloover. (335). Simental had no independent recollection of the investigation and 30-day suspension Cloover received when he committed a battery and exerted unnecessary force upon a subject. (336). Simental can only state that she was looking at a disciplinary action and the director issued a thirty-day suspension to Cloover for what appeared to be four ROC violations. (336). Cloover violated what was then the Illinois Revised Statutes when he exerted unnecessary force upon the person of Kevin Coffman by grasping the hair on Coffman's head and pushing him against a parked car. (337).

In July 1999, Simental was a sergeant in DII in the northern command out of the 83rd and King facility. (338). Based on Simental's review of the 1999 disciplinary action of Trooper Robert Galletson, the disciplinary action letter indicated that Galletson received a five-day

suspension for seizing film from a reporter without lawful justification and pointing his shotgun at his head on at least two occasions. (338). The letter also indicated that the suspect was handcuffed with numerous officers around him, but Simental did not know if he was improperly handcuffed. (338).

Simental was promoted to master sergeant in the northern command of DII in November 2000. (339). Simental viewed the December 20, 2000 official disciplinary action of Sergeant Michael Inman from District 14, which was under southern command. (338-339). The letter indicated that Inman received a five-day suspension for four rule of conduct violations, one of which indicated he acted improperly by drawing his service weapon and pointing it at Mr. Will Murray who was not involved in any criminal activity. (340). Another charge was that Inman failed to use a lesser control tactic, but Simental could not say that was the same as excessive force because the particular Rule of Conduct was revised in 2007. (340). Simental could make the assumption that failure to use a lesser control tactic when Inman pressed his service weapon against a suspect's body would be excessive force, but she did not know what ROC III.A.44 was at the time. (340).

Simental has been in a DII supervisory role since November 2000. (341). There have been officers who have been arrested and convicted for misdemeanor offenses and are still employed by the Illinois State Police. (341). There have been officers during Simental's tenure as a supervisor in DII arrested for domestic battery but she does not remember if they were convicted. (341). The officer that Simental remembers was convicted of obstruction of justice was since terminated from employment. (341-342). Simental did not know the particulars of Trooper Brandi Yokum's case where she was arrested and convicted of attempted obstruction of justice and she did not know for what Yokum was convicted. (342). Other officers have misdemeanor convictions for DUI and continue to work. (342). There were no criminal charges or convictions against Mihaljevich. (342).

Simental did not know the specifics of the July 7, 2011, Merit Board decision in the matter of Special Agent Pete Goodman as it was a southern command investigation. (342-343). In July 2011, Simental was a lieutenant in the Tinley Park office of DII. (343). Based on Simental's review of the Merit Board decision Goodman received a ninety-day suspension that appeared to be a settlement agreement approved by the Merit Board. (343). Goodman admitted to allegations in two counts and three others were dismissed. (344). Goodman admitted to bringing the department into disrepute. (344). There was a domestic incident at Goodman's residence and the Columbia Police Department responded. (344). Goodman admitted to misdemeanor domestic battery. (344-345). The Department agreed, and the Merit Board accepted, a ninety-day suspension based on the settlement offer. (345).

The final precedent case is the October 21, 2011, Merit Board decision in the matter of Special Agent Timothy Brown. (345). In October 2011, Simental was a lieutenant in the Tinley Park office. (345). Brown's case was handled by southern command. (345). Brown received a sixty-day suspension based upon a joint motion for a decision of the Merit Board wherein the Department and Brown agreed to the punishment. (345). Brown admitted that he grabbed an individual and put his arms around his neck and he was charged with two counts of felony aggravated battery in Cumberland County. (346). In exchange for a plea of guilty, the State's Attorney dismissed the two felony aggravated battery counts and filed a misdemeanor complaint against Brown for reckless conduct for which he was subsequently found guilty of the criminal offense and received six months court supervision and fines. (346-347). Brown also admitted he violated Rule of Conduct A43 for using more force than necessary because he never completed a field report in connection with the incident. (347).

On redirect-examination, Czub cooperated in the investigation and was never found to be untruthful. (347). An attempt was made to recover Monica's phone but the phone was not recovered. (347-348). There were several attempts made to interview Monica but she refused.



(348). After the disciplinary review board meets in regards to a specific discipline, the board convenes with a recommendation and the recommendation is drafted in letter form and sent to the director's office for a final decision. (348). The Department must prove its charges by a preponderance of the evidence. (349). The disciplinary matrix for the Illinois State Police is made known to the troopers; it is affixed to the rule of conduct policy and Mihaljevich would have access to that matrix. (349). Mihaljevich would know that if he violated the conduct outlined in the matrix he would be punished. (349).

In general, the difference between an official disciplinary action and a decision of the Merit Board is that an official disciplinary action is action taken by the director of the state police and the recommended discipline is thirty days and below, and anything above thirty days goes before the Merit Board for review. (349-350). The difference between a Merit Board decision on discipline and a settlement in regards to discipline is that a settlement offer is an agreement between the Department and the employee along with their bargaining unit representation coming together with an offer for discipline to be presented to the Merit Board for final determination. (350).

Being found guilty of lying creates a credibility deficit for the officer and presents a Giglio-related issue for the Department if the matter comes up during court proceedings. (350). If an officer has been found to have a Giglio-related issue when they have to go to court to testify in a particular matter, that issue can be taken under advisement and it undermines the officer's ability to testify credibly in that particular hearing. (351).

On recross-examination, DII attempted several times to interview Mihaljevich's wife. (352). DII went to the house on a couple of occasions to interview her and on both occasions DII showed up unannounced. (352). Simental did not remember specifically what Monica told the DII agents on July 31, 2014. (352). Without looking at the individual report, Simental did not remember the specific conversation DII had with Monica and whether DII requested Monica's

telephone. (352-353, 354). DII went to Monica's house again on September 14, 2014, when Mihaljevich was at home and Simental did not know that DII would have demanded Monica give an interview, but they would have asked. (353). Simental knew that Mihaljevich called his attorney at that point, and she assumed it would have been for advice. (353-354). Simental did not remember the specific conversations but she knew that DII did not get a consensual interview with Monica. (354). Simental supposed that the Department could have subpoenaed Monica to testify at the proceeding but Simental did not know who all the witnesses to come before the case and did not know whether Monica was to be called. (354-355).

If Mihaljevich is found guilty by the Merit Board of being untruthful in his administrative interview, that may somehow affect his credibility in future cases he may have to testify in if that information has been requested and presented to that jurisdiction that has requested it. (355-356). Simental stated that a criminal conviction is not the sole basis for a Giglio-related issue for an employee. (356). Simental was not aware that when an officer is testifying in court and a defense attorney attempts to impeach him based upon prior misconduct, the law in Illinois is that the only prior misconduct that can be used to impeach in that type of situation is a prior criminal conviction. (357). Simental was not aware that the law in Illinois states that in this type of situation, where you have an administrative violation of a state police rule of conduct that that type of prior misconduct cannot be used against a witness for impeachment purposes. (357). Simental has not determined whether that is the law in Illinois. (358). Simental does not find it to be an issue that she continuously states that an officer's credibility could be attacked by the finding of a violation of administrative rules of conduct because she is reporting that it can be, not that it will be. (358). Simental does not know that it is or is not the law. (358). Simental is not here to make a legal decision and it is not important for the basis of her opinion. (358). That is not what she is doing by saying that an officer's credibility can be attacked in a court of law by a prior finding of an administrative misconduct. (358-359). Simental said that an officers

credibility can be attacked, but the determination on whether it is or is not is up to the attorney and judge assigned to the case, but it can be reported. (358-359).

The A8, the level two, is the more serious of the two charges in Count VI and VII. (360-361). The A8 is when the conduct of the officers is broadcast to an outside entity, in this case the Chicago Police Department. (361). There are times when an officer's conduct is not becoming of an officer, the A7, but the conduct has not be broadcast to an outside entity, whether that is a local police agency or a State's Attorney's Office. (361). The A8 in this instance is because the incident was reported and handled by the Chicago Police Department. (362). The A7 and A8 behaviors overlap. (362).

**MICHAEL WITT**  
**(Called in Respondent's Case (Pgs. 382-394))**

Michael Witt has been an Illinois State Police officer for twenty years. (382). Witt is currently a lieutenant assigned to the specialty units in District Chicago. (383). Witt has known Mihaljevich since he came on the job and he had the opportunity to supervise Mihaljevich when he was in charge of the vehicle investigation bureau. (383).

Witt was shown Mihaljevich's performance evaluations dating from August 9, 2015 [sic], until the last one in 2014, Respondent's Exhibit 6. (383). Witt evaluated Mihaljevich on several occasions from April 23, 2012, through November 20, 2013, and he prepared promotional skills evaluations and job performance evaluations. (383-384). A part II job performance evaluation is designed to evaluate a trooper's current performance in their current work position. (384). A part III is to evaluate their potential for promotion to the next rank. (384). The ratings have different categories, including skilled and highly skilled. (385). Skilled means that the officer is proficient in the area. (386).

In the April 23, 2012, promotional skills evaluation, Witt gave Mihaljevich all skilled ratings. (386). Witt was not sure if Mihaljevich was new to his unit at that point. (386).

Whenever Witt says an officer needs improvement or is highly skilled, he is supposed to put

written documentation in as to those ratings. (386).

The November 29, 2012 promotional skills evaluation is a part II job performance evaluation. (386-387). This evaluation occurred when Mihaljevich was in VIB. (387). Mihaljevich met expectations in twelve dimensions and exceeded expectations in two. (387). Nowhere in the evaluation did Witt indicate that Mihaljevich needed improvement in any area. (387). Mihaljevich exceeded expectations in operating communication equipment. (387). Mihaljevich was efficient in the use of LEADS, NADA, ISO, and Carfax in his investigations and vastly improved his knowledge of NADA, ISO, and Carfax databases during the period. (388). Mihaljevich processed a large majority of article 36 seizures during the period and utilized the necessary databases to obtain information efficiently and effectively. (388). Mihaljevich also exceeded expectations in record report management because he had shown a great improvement in his report writing management during the period. (388). Mihaljevich had to adjust to the new types of reports in the VIO section and initially had difficulty staying organized. (388). Mihaljevich greatly improved his report writing skills and organization. (388). Mihaljevich had processed seven article 36 packets in a two-week period in November 2012 and he was able to keep on task with all other VIO assignments. (388-389). Mihaljevich's reports were always submitted in a timely manner and free from error. (389).

In the April 29, 2013 part III promotional skills evaluation, Mihaljevich received skilled ratings in all nine dimensions. (389). Mihaljevich did not need improvement in any dimension. (389-390).

In the November 29, 2013 part II job performance evaluation, Mihaljevich was still assigned to VIB. (390). Mihaljevich received eleven meets expectations, three exceeds expectations, and no need for improvement in any dimensions. (390). Mihaljevich exceeded expectations in operating communication equipment, internal/external communication coordination, and professional development. (390).



Mihaljevich exceeded expectations in internal/external communication and coordination because he maintained open lines of communication with the supervisors and tow companies. (391). He also volunteered on several occasions to assist District Chicago with a variety of additional assignments outside of his VIO job duties. (391). During the period, Mihaljevich did Tow Trucks for Tots, Palos Park half marathon, and volunteered for patrol. (391). He gained experience and was able to make sound decisions as they related to VIO questions. (391).

Mihaljevich exceeded expectations in professional development because he paid [his own money based on the State's financial situation] to attend a motor vehicle theft conference [in Peoria, IL] in May 2013, attended an article 36 training at the ISP academy, and attended a training on identifying heavy-duty equipment. (391-392, 393). Mihaljevich continued to strive to learn the complexities about the vehicle identification and vehicle theft. (392).

Witt described Mihaljevich's work ethic and abilities as good. (392). At no time during the one and a half to two years that Witt supervised Mihaljevich did he indicate or instruct Mihaljevich that he needed improvement in any area of police work. (392).

**MICHAEL KRAFT**  
**(Called in Respondent's Case (Pgs. 394-405))**

Michael Kraft has been employed with the Illinois State Police for twenty years. (394). He has held various assignments; he spent his first sixteen-and-a-half years in District Chicago, and for the past three years has been assigned to District Two, Elgin. (394-395). Kraft knows Mihaljevich. (395). They first met in academy class in 1992 and then worked together in 1996 or 1997 on north sector patrol. (395). Mihaljevich worked for Kraft when Kraft was the administrative master sergeant in District Chicago and Mihaljevich was a court officer. (395).

Kraft and Mihaljevich worked the midnight shift together for about a year. (395). Kraft and Mihaljevich had opportunities to assist each other and back each other up on calls. (395-396). Kraft worked the midnight shift for at least a year prior to Mihaljevich and he was more familiar with the shift. (396). It was a brand new shift for Mihaljevich. (396). Kraft only

remembered one incident with Mihaljevich. (396). Mihaljevich was having difficulty on a traffic stop in a grocery store parking lot and it took him about thirty minutes to wrap up the stop. (396). Other than that incident, no other incident stood out in Kraft's memory. (396).

In November 2011, Kraft was Mihaljevich's supervisor. (396). Kraft was the administrative master sergeant and Mihaljevich was a court officer. (396-397). Mihaljevich's responsibilities were to take care of all the paperwork that needed to go to and from court, associate himself with the clerical section and ensure that the paperwork they completed for court was taken to court, and to handle any incidents that came up with officers and their court paperwork. (397). A court officer would liaise with the court and liaisons from the court and bring information back; subpoenas, tickets, arrest paperwork. (397). He shuffled back and forth and made sure that the paperwork needed for court either the court or the officers are correct. (397). As master sergeant, Kraft prepared Mihaljevich's part II job performance evaluation. (397).

Kraft was shown Respondent's Exhibit and referred to the November 30, 2011 part II job performance evaluation. (398). Kraft did not know if that particular document was the evaluation he prepared for Mihaljevich because his name was not on it, however, the page after has Kraft's signature and ID number. (398). The dates on the pages match and it indicates that Kraft prepared the document. (399). The document has three ratings; needs improvement, meets expectations, or exceeds expectations. (399). There are basic general guidelines and if an officer is performing within those guidelines it falls into one of those three categories. (399). The 'meets' category indicates the officer is doing his job. (399). Mihaljevich did not need improvement in any dimensions. (399). Mihaljevich met or exceeded expectations in all categories that related to him. (400). Mihaljevich exceeded expectations in four dimensions: public service and relations, operating communications equipment, court-related activities, and internal/external communication and coordination. (400). When a supervisor indicates an officer

exceeds expectations, they have to provide written documentation. (400).

Mihaljevich exceeded expectations in public service and relations because he routinely handled questions phoned into his cell or by other troopers or officials from other agencies such as CPD or the State's Attorney's office. (401). He attended meetings with the chief judge's office and presiding judges. (401). Mihaljevich had an ability to communicate with other entities outside the ISP. (401).

Mihaljevich exceeded expectations in operating communication equipment because of his use of the email system on the ISP email and the laptop system, referred to as IWIN and all the messages to and from the courts, and mostly the troopers. (401-402).

Mihaljevich exceeded expectations in court related activities. (402). Mihaljevich made numerous criminal traffic arrests and remained composed and confident as a witness when testifying in court. (402). Mihaljevich was able to effectively communicate, both verbally and in writing, the circumstances of an arrest. (402). Mihaljevich's years of self-initiated field activity as a court officer afforded him a working knowledge of the judicial system. (402). His court-related activities improved and he was sought out by others for advice on court related issues because he, in essence, became an expert for the district in that activity. (402-403).

Mihaljevich exceeded expectations in internal/external communication and coordination because he was excellent in communicating with the numerous entities involved in the District Chicago court section including the six main court branches and the sub courts for criminal court. (403). This included going to and from courts, traveling on his own time in some cases but mostly on company time, and making his own schedule out to get all the work done. (403). It also included having conversations with the court clerks to make sure everything was right and then relaying it back to the administrative section if needed. (403). Based on a review of the job performance evaluation, Kraft believed that Mihaljevich did not need improvement in any aspect of his work as a court officer. (403-404).

**ANGELO MOLLO**  
**(Called in Respondent's Case (Pgs. 405-416))**

Angelo Mollo has been employed with the Illinois State Police for twenty years. (405). Mollo has held a number of assignments for ISP and in 2013 he became the administrative master sergeant in District Chicago. (406). As administrative master sergeant, Mollo supervises the court section, the VIB section, and the fleet section, as he assists in the FTO program. (406). Mihaljevich was assigned to VIB. (406). In 2013, Lieutenant Witt was Mihaljevich's supervisor, but that position was consolidated and Mollo took over. (406). Since 2014, Mollo has been Mihaljevich's supervisor. (406).

In March 2013[sic], after this occurrence, Mihaljevich was placed on restricted duty. (407). When on restricted duty, Mihaljevich does not have police powers. (407). He is equipped with a vehicle with no lights, markings, or radios. (407). Mihaljevich cannot assist the public in a motor assist, investigate traffic crashes, or make traffic stops. (407). Mihaljevich does not necessarily have a lot of the same duties as a VIB officer. (407). As a VIB officer, Mihaljevich had different tasks. (407). He did COPs, he visited tow yards on a regular basis, he completed certificates of purchases, and he completed article 36 packets. (407). He does not do that on restrictive duty. (407). On restrictive duty, Mihaljevich organizes tow sheets in numerical order and on occasion visits the tow yards as a group collectively with Mollo. (408). They check out burnt vehicles, inspection, and make sure that the VIN matches the vehicle but those are far and few between issues. (408). Mollo still gets to supervise him. (408).

Mollo was shown Respondent's Exhibit 6, which included Mihaljevich's November 7, 2014, part II job performance evaluation. (408). Mollo prepared the evaluation. (408). Mihaljevich met expectations in eleven dimensions and exceeded expectations in three dimensions. (409). Nowhere in the evaluation did Mollo indicate that Mihaljevich needed improvement in any way. (409). As a supervisor, when Mollo indicates that somebody exceeds expectations, he is to provide written documentation and he did so for this evaluation. (409).



Mihaljevich exceeded expectations in operating equipment because he did a good job completing article 36s, which are [completed] when a vehicle is seized. (409-410). He had to go through LEADS, NADA, and Carfax to determine the value of the vehicle and Mihaljevich did a good job. (410).

Mihaljevich exceeded expectations in record and report management. (410). Mihaljevich did a good job with the article 36 packets and when he would turn them in to Mollo they were error free. (410). Mihaljevich made Mollo's job easier to thumb through them, make sure all the pertinent information was there, and send them to the State's Attorney's Office. (410).

Mihaljevich exceeded expectations in internal/external communications and coordination. (410). There are forty-one tow companies within the district and Mihaljevich did a good job of maintaining contact with his group of tow companies, communicating with them and completing certificates of purchase when they had them in their yard. (410-411). He went there and maintained contact with them, which was important to keeping them happy. (411).

Since Mihaljevich was put on restricted duty pending the Merit Board charges for termination, he organized the tow sheets, but it was not part of his duties as a VIB officer. (411). Mihaljevich appeared at work on time and did his job. (411). Mihaljevich needed no improvement in any dimension. (411).

Mollo evaluated Mihaljevich after November 2014. (411-412). He believed it was in October or November 2015. (411-412). Mollo did not recall if he gave Mihaljevich a similar evaluation because some duties no longer pertain to him. (412). Mihaljevich is no longer able to complete article 36s. (412). Mollo retrieved Mihaljevich's November 2015 evaluation and it was added to Respondent's Exhibit 6. (412). The most recent evaluation of Mihaljevich by Mollo was on November 6, 2015. (413). More dimensions applied to Mihaljevich on November 7, 2014, because he was not on restricted duty status the entire time during that evaluation. (413). Because Mihaljevich was on restricted duty, only four dimensions of the part II performance

evaluation applied to him in November 2015. (414). Mihaljevich met expectations in three categories and exceeded expectations in record and report management. (414).

Mihaljevich exceeded expectations in record and report management because it was part of his duties to organize the tow sheets and put them in numerical order by month. (414). ISP gets FOIA requests for the tow sheets and if a tow company or a citizens complaint comes in, Mollo reviews the tow sheets to ensure that everything was done properly. (414-415). Mihaljevich helped by putting the sheets in order because there are approximately 10,000 tows and it is cumbersome to go through. (415). Mihaljevich has made Mollo's job a little bit easier. (415). On restricted duty, Mollo is not able to evaluate Mihaljevich in all the dimensions, but in the work that he has been assigned to do Mollo has never indicated that Mihaljevich needs any improvement. (415).

**ANTHONY LUPO**  
**(Called in Respondent's Case (Pgs. 416-427))**

Anthony Lupo is an investigator for the State's Attorney's Office in Cook County. (416-417). Lupo was employed as a lieutenant with the Illinois State Police from 1989 through 2014, and until 2011, he was assigned to District Chicago with most of his career in patrol. (417-418). In November 2010, Lupo was an administrative lieutenant in District Chicago. (418). Lupo has known Mihaljevich since Mihaljevich started with the state police. (418). In November 2010, Mihaljevich was a court officer and Lupo was his supervisor. (418). The master sergeants are responsible for preparing evaluations, but at the time they did not have a master sergeant. (419). Lupo, as lieutenant in administration, prepared Mihaljevich's evaluation. (419).

Lupo was shown Respondent's Exhibit 6, which included the November 17, 2010 part II job performance evaluation that Lupo prepared. (419). Mihaljevich met expectations in six dimensions and exceeded expectations in seven dimensions. (420). Meeting expectations means that the officer is doing an acceptable job and exceeding expectations means the officer is going above and beyond acceptable. (420). When an officer exceeds expectations, written

documentation is provided and Lupo did so. (420).

Mihaljevich exceeded expectations in public service and relations. (420-421).

Mihaljevich was a court officer and he networked with a variety of personnel ranging from the general public to the circuit court clerk personnel as well as code and sworn employees regarding court-related matters. (421). Mihaljevich routinely handled questions by other troopers and officials, other agencies such as CPD, State's Attorney office, attended meetings with honorable Cook County Chief Judge Time Evans and presiding chief judges in six municipal district court houses. (421). Mihaljevich was always willing to go out of his way to help others when necessary or maintain a harmonious relationship and thus provided a positive image to the ISP. (421). Mihaljevich had above average oral and listening skills and demonstrated these skills daily when communicating with the diverse groups. (421).

Mihaljevich exceeded expectations in operating communications equipment. (422).

Mihaljevich was very good on the computer. (422). Mihaljevich was able to handle all his tasks as a court officer. (422).

Mihaljevich exceeded expectations in court-related activities. (422). Mihaljevich has made numerous criminal and traffic arrests and always remained composed and confident as a witness when testifying in court. (422). Mihaljevich was able to effectively communicate, both verbally and in writing, the circumstances of an arrest, resulting in high conviction rate. (422). Mihaljevich has years of self-initiative activity and as a court officer he had working knowledge of the judicial system. (422-423). Mihaljevich was sought out by others for advice on court-related issues and received praise from circuit court clerk personnel regarding his ability to act as a liaison between the district and the courthouses. (423).

Mihaljevich exceeded expectations in evidence collection and investigation. (423).

Mihaljevich was a court officer and he helped in the vault. (423). Mihaljevich's assignment required him to work closely with evidence vault personnel. (423). Mihaljevich was well versed

in the importance of preserving evidence during preliminary investigations at crime scenes. (423). Mihaljevich followed ISP policy and procedure and pursued information during an accident that permitted the subsequent identification of witnesses and suspects. (423).

Mihaljevich exceeded expectations in record and report management. (424). As court officer, Mihaljevich always had ample supplies, planned ahead, and ensured others were also equipped for duty by constantly sending computer messages to the officers in the field and checking with them if they were in need of court supplies. (424). Mihaljevich's responsibilities included organizational quality, and checking and filing of court documents. (424). Mihaljevich always submitted his paperwork on time and ahead of schedule and his recordkeeping techniques were above average and used as an example for others. (424). Some of Mihaljevich's work objectives included processing of bond money and, with the completion of video and DVD tape recordings, the labelling of tapes and tape inventory in order to comply with subpoena requests. (424).

Mihaljevich exceeded expectations in both internal/external communication and coordination and professional development. (425). Lupo worked with Mihaljevich as a trooper on the street and when he was assigned to the admin. (425). If Lupo asked Mihaljevich to do something, Mihaljevich did it, and got it done on time. (425).

Based on his experience as both a supervisor and coworker, Lupo did not believe Mihaljevich needed improvement in any aspect of his police work because when Mihaljevich worked for Lupo, if he asked him to do something, it was done. (425). Mihaljevich worked with Lupo on the road during 1995 or 1996 and they might have been on the same platoon or had the same shift. (425). Lupo helped Mihaljevich and Mihaljevich helped Lupo. (425-426).

**SHERISE GIPSON**  
**(Called in Respondent's Case (Pgs. 427-434))**

Sherise Gipson has worked for the Illinois State Police for eight years and in 2011, she transferred to the Division of Internal Investigation. (427-428). Gipson received three weeks of



basic investigative training when she was assigned to DII. (428-429). Gipson has been involved in at least twenty police investigatory cases. (429). Gipson was not assigned to work on the investigation of Mihaljevich but she was assisting the case agent, Genelle Jones, on the case. (429). As an assisting officer to the case agent, Gipson's duties were outlined by the case agent. (429). If Gipson needs to assist on an interview, she will. (429). Investigators go out as two for interviews, or to talk to anyone in general. (429-430).

Gipson was not involved in the preparation of proposed administrative charges. (430). Jones never discussed with Gipson whether Mihaljevich's case qualified for a MASA agreement. (430). Gipson did not know whether Jones ever made a MASA recommendation. (430).

Gipson recalled attempting to interview Monica on July 31, 2014. (430). Gipson went to the residence of Mihaljevich and Monica unannounced. (430-431). Mihaljevich was at home when Gipson arrived but Gipson did not initially know that Monica was home. (431). Gipson later found out that Monica was home. (431). Monica came out of the house with Mihaljevich and told Gipson that she did not wish to answer any questions or be a part of the investigation and wished any future contact with her to cease. (431).

Gipson did not remember sending an email to her supervisor, Macaria Forcen, telling her what Monica said. (431). Respondent's Exhibit 7 is an email from Gipson to her supervisor on July 31, 2014 stating that Monica told her she did not wish to answer any questions or be a part of the investigation and to not have any future contact with her. (432). Gipson followed Monica's wishes and did not have any future contact with her. (432).

Gipson does not recall attempting to interview Monica again on September 14, 2014. (433). Gipson recalled going to the house on July 31, 2014 and Mihaljevich called his attorney because Gipson and Jones were at the residence trying to interview his wife again. (433). Gipson only recalls going to the house on July 31. (433). Gipson did not recall going to the house on two separate occasions to attempt to interview Monica. (433).

On cross-examination, the occasion that Gipson did speak to Monica, Mihaljevich was present. (433). Gipson was never able to speak with Monica without Mihaljevich present. (433).

On redirect-examination, Gipson did not remember Mihaljevich being on sick leave and that being the reason that he was present. (434).

**CRAIG MIHALJEVICH**  
**(Called in Respondent's Case (Pgs. 435-520))**

Craig Mihaljevich has been employed with the Illinois State Police for over twenty years. (436). He spent approximately fifteen years working patrol in District Chicago, then he transferred to administration, which consists of courts, for two-and-a-half years, and then he moved to vehicle investigations. (436). At the time of this occurrence in March 2014, Mihaljevich was assigned to VIB. (436). In VIB, Mihaljevich's employment involved identifying vehicles for tow companies to the public, stolen vehicles, and assisting other agencies for retagging identification including trailers, boats and motorcycles. (437). He would also liaison with forty-one different vendors that towed for the highways and state police. (437). Mihaljevich remained in that assignment until March 24, 2014. (437).

In the evening of March 24, 2014, Mihaljevich was stripped of his equipment and placed on restricted duty. (437). Restricted duty involves being given a plain car and his duties involve paperwork, or anything without any police powers. (437).

Mihaljevich is married to Monica Escobar. (437). Monica is from Guatemala and they met in Guatemala. (437-438). Mihaljevich and Monica have been married since April 2013. (438). Monica does okay with the language, but at times she has challenges understanding and speaking the English language and the idiosyncrasies. (438). Monica has problems with the fundamental structure of the English language because the language may leave questions open-ended or there are different meanings for words. (438). Monica is used to a very structured sentence. (438). Mihaljevich and Monica have a daughter, Fatima, from Monica's previous marriage. (438-439). Fatima is sixteen years old. (438). Both Monica and Fatima live with

Mihaljevich at 6242 South Mason, in Chicago. (438-439).

On March 24, 2014, Mihaljevich was off work due to an injury from an off-duty car accident. (439). Mihaljevich was having back pain and he notified his boss that he would be 515, which is a code for sick or ill. (439). Mihaljevich and Monica have one car and Mihaljevich told Monica that he would drive her to school so he could use the vehicle to go to the doctor later due to his severe pain. (439). Mihaljevich drove Monica to school at Daley College on approximately 76th and Pulaski. (440).

On March 24, 2014, Mihaljevich had a fully marked squad car. (440). On that day, it was parked offset from his house. (440). Standing in front of his house, looking to the right, south towards 63rd Street, the car was one spot to the right of his house. (440-441). If someone entered Mihaljevich's house through the front door, they would clearly be able to see the vehicle; there were no obstructions. (441).

Mihaljevich took Monica to school at approximately 7:45 a.m. (441). Mihaljevich drove his personal vehicle, a Jeep Patriot. (441). Monica was caught off guard when Mihaljevich told her he would be taking her to school that morning. (441). It appeared she did not intend to go to school that day or did not expect him to be staying home from work on a sick code. (441).

Mihaljevich informed Monica that he was not going to work after 7:00 a.m. (442).

Mihaljevich ended up with Monica's telephone after he drove her to school. (442). Mihaljevich dropped Monica off and she exited the vehicle with her bookbag and purse. (442). He started to pull away and when he reentered Pulaski, he heard a beeping sound. (442). The phone had fallen behind her and was slightly wedged in the seat. (442). Mihaljevich looked at the phone, assuming Monica realized she left her phone and was contacting him through somebody else. (442). There was a text message on the phone at that time. (442). Mihaljevich did not recall specifically what the message said, but it had sexual content. (442-443). The message had to do with meeting Monica or involvement with Monica. (443). Mihaljevich was on 63rd, after he

turned off Pulaski, heading home when he reviewed the text message. (443).

Mihaljevich was not acting as Monica, but he returned the text message telling the individual, later identified as Czub, to come to the house with the intent of discussing the inappropriate texts and to stay away from his wife and family. (443). Mihaljevich sent the text while he was still in his vehicle on the way home. (443). In the text message, Mihaljevich said to Czub to come to his house, not into his house. (443-444). Czub responded, "yes, I will see you later," but Mihaljevich did not recall if the individual responded prior to the time he arrived home because the distance is not that long. (444). To Mihaljevich, that response meant that Czub already had knowledge of his residence because he did not request an address or location of the house. (444). Mihaljevich only sent one message to Czub. (444).

When Mihaljevich arrived home, he let the dog out and he may have gotten something to eat. (445). Mihaljevich specifically remembered doing laundry later on that morning. (445). Mihaljevich's laundry room is located in the basement. (445). He lives in a split-level ranch and there are four different levels within the house. (445). While he was downstairs, Mihaljevich heard footsteps above. (445). He did not think much about the footsteps. (445). Due to his injury, Mihaljevich had friends and neighbors stopping by his house. (445). The dog was in the laundry room with him. (445). The footsteps continued and his dog started to growl, which is uncharacteristic, and the hair on her back went up. (445). The footsteps continued past the kitchen and upstairs into a hallway. (445). The laundry room is directly underneath the kitchen. (445). Mihaljevich was suspicious because none of his friends or family ever violated his privacy and nobody announced themselves coming in to the house. (446). Given the unusual circumstances, Mihaljevich felt that he did not know the person and he thought it was a safety concern. (446). Mihaljevich keeps his duty belt in a cabinet in the laundry room. (446). When he comes home after working in VIB he has grease and car material on him, so he goes to the basement to change and lock up his equipment, do laundry and maintenance on his equipment.



(446).

Mihaljevich grabbed his duty belt from the cabinet. (446). Mihaljevich proceeded up the stairs. (447). Mihaljevich went up the first set of stairs from the basement to the main floor while holding the dog. (447). The dog began to growl more and Mihaljevich unholstered his weapon. (447). Mihaljevich held his weapon at the low ready position, meaning the weapon was below his waist and pointed towards the ground. (447). Mihaljevich went up the stairs to the ground floor and then walked to the second set of stairs that led to the kitchen. (447). As Mihaljevich turned the corner, he saw Czub down the hallway by his bedroom completely naked. (447). At that time, Mihaljevich did not know Czub's ID. (447). Mihaljevich was in the kitchen when he first saw Czub in the hallway outside the bedroom. (448). There was a clear view from the kitchen to the hallway. (448). The hallway was clear and obstructed [sic]. (448). Czub was attempting to open the door to head into Mihaljevich's bedroom. (448).

Mihaljevich was shown Respondent's Exhibit 8, a group exhibit of photographs. (448). Mihaljevich recognized Exhibit 8 as his hallway, with the kitchen area at the bottom of the stairs, and past the chair would be his bedroom door. (448). On March 24, 2014, Mihaljevich did not own any black chairs. (448). The chair in the first photograph is an example; it is a kitchen chair that Mihaljevich has. (449). There are three doors in the hallway, the door to the immediate left is the bathroom door, the door which appears in the middle of the hallway is an additional bedroom, and the door straight ahead, behind the chair is Mihaljevich's bedroom. (449-450). Mihaljevich has measured the dimensions of his hallway and it is approximately three feet wide. (450). As a practical matter, it would be very difficult to enter Mihaljevich's bedroom with a chair sitting in front of it. (450). Mihaljevich has never had a chair placed in that hallway on a permanent basis because there is no room for a chair. (450). Someone would have to contort their body constantly to get around a chair. (450).

Mihaljevich did not place a chair in that hallway on March 24, 2014. (450). Mihaljevich

did not ever place any note on a chair or anywhere else in his house advising Czub to get undressed and enter the bedroom. (451). Mihaljevich did not know whether Czub was ever at his home prior to March 24, 2014. (451). Czub did not indicate that he had sex with Monica at Mihaljevich's home prior to March 24, 2014. (451-452). Mihaljevich never met Czub before that date. (452). Mihaljevich is aware that since the case began Czub testified that he had been at Mihaljevich's home prior to March 24, 2014. (452).

Czub's clothes were in the middle, length-wise, of the hallway. (453). His clothes were sitting directly on the floor. (453). His shoes were on the floor, part of his pants was draped over his shoes, and a shirt. (453). On top of the clothes, there was a set of keys and a cell phone. (453). Mihaljevich could not see all that from where he was standing in the living room area. (453). Mihaljevich knew what was sitting there because he went closer after he instructed Czub to freeze entering his bedroom. (454). Mihaljevich told Czub to freeze and identified himself as the police. (454, 455). Czub said he was a state trooper and Mihaljevich said, "that's funny. So am I." (454). Mihaljevich went up to him and, being a state trooper, Mihaljevich knew that troopers are required to carry ID, he asked Czub for ID. (454). Czub said he had no identification. (454). Mihaljevich asked if there was anything in Czub's clothes to ID who he said he was. (454). Czub stated that he did not. (454, 455). Mihaljevich was unable to identify who Czub was and he told Czub for both of their safety he was going to temporarily put handcuffs on Czub until he could determine his identification. (454, 456). Czub agreed and cooperated. (454).

Mihaljevich did not point his gun at Czub and say anything. (454-455). Mihaljevich held his gun in a low ready position and told Czub to freeze as he was attempting to open the bedroom door. (455). Mihaljevich first saw Czub when Czub was attempting to open the bedroom door and after telling him to freeze, Mihaljevich walked up stairs and asked him for identification. (455). Czub did not have a driver's license or state police ID. (455). Mihaljevich

specifically asked for a state police ID since Czub was identifying himself as a state trooper. (455). Mihaljevich did not identify himself as a trooper before Czub did. (455-456). Mihaljevich thought that Czub was identifying himself as a state trooper just because he saw Mihaljevich's squad car out front. (456).

After Mihaljevich handcuffed Czub, things were going pretty fast, and he called his neighbor, Robert Eigenbauer. (456). Eigenbauer lived less than thirty yards away. (456). Mihaljevich knew Eigenbauer's phone number because they had exchanged numbers before and talked shop. (456-457). Mihaljevich would classify Eigenbauer as an acquaintance. (457). Eigenbauer gave him his number in case there was ever an emergency or if Mihaljevich needed anything. (457). Mihaljevich felt that this situation was an emergency and Eigenbauer was the closest. (457). Mihaljevich considered it an emergency because he had an unknown subject in his house stating that he was law enforcement with no verification. (457). Mihaljevich knew that Eigenbauer had police powers and, given the unusual circumstances, thought that he could assist. (457). Mihaljevich thought he called Eigenbauer twice because one of the calls was dropped within a few seconds. (457-458). The conversation with Eigenbauer was that there was a naked man in Mihaljevich's house and that he needed assistance. (458). Eigenbauer responded that he would be right there. (458). Eigenbauer's three-flat and Mihaljevich's house were in an "L shape," Eigenbauer had a direct view of the back of Mihaljevich's house. (458). Eigenbauer arrived within a minute or two. (458).

Between the time that Mihaljevich handcuffed Czub and the time that Eigenbauer arrived, Mihaljevich did not have any more conversations with Czub. (458-459). Mihaljevich picked up Czub's shoes, clothes, keys, and phone off the floor and escorted him downstairs towards the hallway. (459). Mihaljevich has a half wall ledge; he put the clothes and shoes by the bottom of the half wall, and he put the keys and phone on the top of the half wall ledge. (459). At that time, Czub was standing in the kitchen area, but Mihaljevich was about three feet away

because the kitchen and the hallway are very close. (459). Czub was in the same area when Eigenbauer arrived. (459).

When Eigenbauer arrived, he started asking questions of Czub. (459-460). Eigenbauer was unable to ascertain who Czub was and within a couple minutes, Eigenbauer directed Mihaljevich to call 911. (460). Mihaljevich did not recall the exact verbiage of why Eigenbauer wanted him to call, but Eigenbauer told him calling 911 was procedurally correct. (460). Mihaljevich agreed to call 911. (460).

Prior to calling 911, Czub made two offers of money. (460). Mihaljevich did not remember the first amount, but the second offer was for \$5,000. (460). Czub was very distraught and was concerned that he was going to lose his job, lose his marriage, and he had two young babies or kids. (460). Mihaljevich never asked Czub about his deferred workers compensation. (461). Mihaljevich never demanded that Czub pay him any money. (461). Mihaljevich did not initiate any talk whatsoever about money. (461). Czub voluntarily offered to pay Mihaljevich money. (461). Czub made two different offers in front of both Mihaljevich and Eigenbauer. (461).

Mihaljevich was livid when he heard Czub testify that Mihaljevich asked Czub whether Czub could get him promoted because that was a "flat out lie." (461-462). Mihaljevich has twenty-plus years on the job and he knows that there is no possibility that someone with less than five or eight years in a completely different district can have any input upon Mihaljevich's growth on the job. (462). Mihaljevich ignored Czub's \$5,000 offer and said that it was not going to save Czub and later told Czub that Chicago is going to handle the situation. (462).

Mihaljevich did not recall the conversations between Eigenbauer and Czub before the Chicago police officers arrived, but he did know that Eigenbauer was asking a series of questions. (462). Generally the questions were about Czub knowing Mihaljevich's wife, but mostly Eigenbauer was questioning Czub on who he was, where his ID was, and why he did not



have ID on him. (462-463). Mihaljevich did not recall if during the conversation with Eigenbauer, Czub admitted he was having an affair with Mihaljevich's wife. (463). The Chicago police came very quickly and Mihaljevich thought the information about the affair came out about the same time the police arrived. (463).

Chicago police arrived and there were four or five officers in total, and they arrived at different times. (463). Mihaljevich thought the first officer to arrive was McGovern and another officer arrived within less than a minute. (463). Mihaljevich did not recall which officer that was. (463). Sergeant Flores came later, after the four other officers were there. (463). When McGovern arrived, Czub was standing in the living room slightly off the hallway where you enter the house. (464). Czub was in the living room with Eigenbauer and Mihaljevich was standing slightly in the hallway, near the half wall. (464). Mihaljevich did not recall if Czub was kneeling at that time. (464). Czub may have knelt when Mihaljevich put the handcuffs on but he did not recall. (464). Mihaljevich did not recall any other time that Czub may have been kneeling. (464).

After McGovern arrived, he was talking with Eigenbauer and Czub. (464). Mihaljevich was not privy to how it was determined Czub was a trooper, but he guessed that Chicago police asked Czub a series of questions, and the officers determined his identity. (465). McGovern was speaking to Czub outside of Mihaljevich's presence. (465). Mihaljevich could see them, but he could not hear Czub and McGovern. (465).

The first time Mihaljevich spoke to a Chicago police officer was when Sergeant Flores arrived. (465). Mihaljevich spoke in generalities; he identified who he was and told the officers he was the homeowner. (465). Mihaljevich spoke only to Flores about the factual situation of what occurred on March 24. (465). Flores and Mihaljevich may have stepped outside to talk and Flores asked what happened. (466, 475). Mihaljevich gave him the synopsis that he was off work injured and was going to go to the doctor. (466). Mihaljevich took his wife to work [sic], she

accidentally forgot her cell phone in the car, and when he heard it, he saw there were text messages that were not appropriate. (466). Mihaljevich told Flores how the events unfolded while he was doing laundry. (466).

Mihaljevich told Flores that he sent one, and only one, text message to Czub. (466). Mihaljevich told Flores that the text message told the individual to come to the house because his intent was that the person would either ring the doorbell or knock. (467). Mihaljevich was going to confront the person and tell him to stay away from his wife, not to contact her, and not to make any attempt to interfere with his family anymore because it was totally inappropriate. (467).

Mihaljevich heard the police officers testify that they did not think it was wise to leave a door unlocked when you are home during the day in Mihaljevich's neighborhood. (467). Mihaljevich disagreed. (467). Mihaljevich was home and he has a dog. (467). Mihaljevich was injured and he had people coming over to visit, wish him well, and see how he was doing. (467). There are at least seven police officers within a one block range. (467). There is a lieutenant at the end of the block, another officer lives in the middle of the block, and there is another officer two doors down and across the street from Mihaljevich. (467-468). There are three buildings where Eigenbauer lives and there is a police officer at each one of those three buildings. (468).

Mihaljevich never told Flores that in his text message he instructed Czub to come to the residence, enter the house, and get undressed. (468). Mihaljevich believes that there were inconsistencies in Flores testimony relating to March 24. (468). Flores stated that information was given to him that Mihaljevich instructed this individual to disrobe in the kitchen when the whole process took place upstairs. (468). Flores misspoke or his statement was not consistent with the facts. (468-469). One of the other officers also testified that the clothes were found on the kitchen table, but Czub's clothes were never on the kitchen table. (469). Czub's clothes went from the upstairs hallway floor to the hallway with the clothes being placed on the floor and his

keys and phone being placed on the ledge. (469). Mihaljevich did not look at or tamper with Czub's phone; he simply picked it up along with the clothes and placed it with the keys on the ledge. (469).

Czub was allowed to get dressed. (469). Mihaljevich thought that was handled by McGovern. (469). Mihaljevich did not recall if McGovern took the handcuffs off Czub but he thought that McGovern probably did since he spent the most time with Czub. (469-470). Mihaljevich was not positive, but he thought McGovern gave Czub his clothes. (470). Czub was in the living room area when he got dressed. (470).

Mihaljevich did not ask Flores or any of the other Chicago police officers to arrest Czub for either breaking and entering or trespass. (470). Eigenbauer brought up arrest and Mihaljevich made those considerations. (470). Mihaljevich was willing to sign a complaint until it was later determined that Czub was a trooper. (470). The first mention of arrest by Chicago police officers was suggested by Eigenbauer. (470-471). Eigenbauer debated with the Chicago police and stated that Czub should be charged with trespassing or breaking and entering, borderline burglary. (471). Eigenbauer and the Chicago police were disagreeing. (471). Eigenbauer's point was that it was for the judge to decide, he felt that Czub was not invited into the house and the other officers said that Czub was invited to the house, they disagreed on technicalities. (471).

The situation was uncomfortable and Mihaljevich was embarrassed because he never thought this could happen to him. (471). Everybody deals with things differently and he did not know if it was the Chicago police officers uneasiness that made them smile, but they did not make it a point to go out of their way. (471-472). It was not a comfortable situation when it is your fellow peers. (472).

After Eigenbauer suggested to the Chicago PD that Czub be arrested, it was later verified that Czub was a trooper. (472). Before Czub was identified, Mihaljevich felt that he did not belong and was breaking the law and he would sign a complaint. (472). Mihaljevich realized

after Czub was identified that he was a trooper and he decided to let the department handle it. (472). Mihaljevich decided to refuse any criminal action be taken against Czub. (472).

Mihaljevich thought that he stated to Flores that he did not want Czub arrested because he was a trooper. (472-473). The Chicago police officers stated that they were not going to arrest Czub because there was an invitation to the home and they were not completely comfortable even though they understood Mihaljevich's predicament. (473). Additionally, the individual turned out to be the same individual that had communicated with Mihaljevich's wife. (473).

While Mihaljevich was in the house with the Chicago police officers, he never heard Czub mention anything about seeing a chair in the hallway with a note on it. (473). None of the Chicago police officers ever went upstairs in the hallway to look for a chair and note, but several officers did have a view [upstairs] from where they were standing. (473-474). McGovern had a sight line into the hall from the living room. (474). The hallway was very tight and Flores backed up into the kitchen and he had a sight line [to the hallway upstairs]. (474).

Chicago police officers gave Czub back his telephone. (474). Mihaljevich did not see Czub do anything with the telephone while in the presence of the Chicago police officers (474). To Mihaljevich's knowledge, the Chicago police officers never asked to see the text messages on Czub's phone. (474).

Czub left Mihaljevich's residence, but he was not sure when because Mihaljevich lost concept of time through the event. (474). Mihaljevich did not know if Czub went outside before or after Illinois State Police command officers arrived on the scene. (475). Mihaljevich thought Flores may have walked Czub out. (475). Mihaljevich knew command was coming into his house and there was other command outside. (475).

Mihaljevich went outside when he spoke to Flores. (475). Mihaljevich was just barely able to see Czub's Tahoe when he was outside. (475). The Tahoe was parked on the east side of the street, a little more than halfway down the block. (475). It was hard to see because there is a



tree two lots over that slightly obscured it with the angle. (475). There were plenty of spots that were open in front of Mihaljevich's house and to the side of his house, even the handicapped spot was available across the street. (476). At the time, Mihaljevich did not think much of it that Czub's vehicle was parked down the street. (476). In hindsight, Mihaljevich thought it was deceptive and sneaky. (476). When you go to somebody's house, whether it is a coworker or if you go to pick up paperwork, you pull right into their house or into the driveway. (476). Mihaljevich thought that Czub went to sit in his vehicle after the command personnel arrived but he was not sure. (476). Mihaljevich never saw Czub sitting in his vehicle. (476).

Lieutenant Renaud, one of the command personnel, came into Mihaljevich's house and she very briefly spoke to Mihaljevich. (477). She introduced herself and told Mihaljevich that she would be handling the District 15 side and that Mihaljevich had supervisors coming from his district to interact with him. (477). When she entered the house, she could not have seen the hallway outside the bedroom. (477). She never asked to look around the house. (477). She never specifically asked to look in the hallway outside of Mihaljevich's bedroom. (478).

Command from Mihaljevich's district arrived. (478). Lieutenants Grendzinski and Harris arrived. (478). The lieutenants worked with Mihaljevich in the past in the position of moral support. (478). Mihaljevich recalled that they empathized with what he discovered. (479). It was a very emotional day and they were there just to offer their support. (479). The Chicago police officers were still there when Renaud arrived, but Mihaljevich did not know if they were still there when Grendzinski and Harris arrived. (479). Mihaljevich never heard or saw Renaud speaking to the Chicago police officers. (479).

DII agents arrived at Mihaljevich's house. (479). Mihaljevich did not know if Renaud was still there when DII arrived, but Harris and Grendzinski were there and were sitting in the living room. (479). DII was the last ISP on the scene. (480). When DII arrived, Grendzinski and Harris were sitting in the living room giving Mihaljevich words of encouragement and telling

him what his options are, how important family is, and trying to put things in perspective for him. (481). Grendzinski and Harris did not ask about what had occurred that day and they wanted no knowledge, they were there for moral support. (481). Neither of them went upstairs outside the bedrooms. (481).

Marcus Gibson and Genelle Jones arrived from DII. (481). When they arrived, Mihaljevich was by the dining room table or getting something to drink. (481). They came in the door and walked down the hallway from the front door. (481). Mihaljevich did not let them in the house, they walked in unannounced, people were still coming and going. (481-482). They entered on their own without invitation. (482). Mihaljevich was standing by the dining room table after getting something to drink and they walked through the hallway that leads into the kitchen. (482). They walked towards the dining room table with their notebooks past the hallway that leads to Mihaljevich's bedroom. (482). They asked Mihaljevich something along the lines of whether he wanted to be questioned or read his rights and he declined at that time to comment about the situation to DII. (482, 483). The DII agents attempted to criminally interview Mihaljevich while Grendzinski and Harris were there for moral support. (483). To Mihaljevich's knowledge, Gibson and Jones never walked upstairs outside of the bedrooms. (483). From where Gibson and Jones were located in Mihaljevich's house when they spoke to him they could have seen outside the bedrooms in the hallway and they walked past that hallway at the base of the stairs. (483). There was never any mention of any chair or note on a chair outside of the bedroom door while Grendzinski, Harris, Gibson, and Jones were in the house. (483). When the DII agents, Grendzinski and Harris were there, nobody asked Mihaljevich to produce his wife's phone at any point in time. (484).

After this occurrence, Mihaljevich gave the phone back to his wife when she got home from school. (484). Mihaljevich did not delete messages or anything of that nature. (484). Mihaljevich did not ever ask his wife to delete messages from that phone. (484). The next day,

after speaking with counsel, Mihaljevich told his wife save the messages. (484). She told him that it was too late, she deleted the messages because she was embarrassed in the shame it brought to the family. (484). Mihaljevich did not ask or instruct his wife to delete the messages from her telephone. (486).

Mihaljevich thought that the Chicago police officers were at his home for at least maybe a half-hour or forty-five minutes. (487). They left at different times. (487). Mihaljevich thought that Renaud was still there with Flores and Flores may have stayed the longest, closer to an hour. (487, 488). Mihaljevich was not sure of the time frame; he was more comfortable with the chronological order than the actual times that they were there. (487). CPD left approximately one hour after the occurrence, though the officers left at varying times, but Mihaljevich based this time on Flores being the last [to leave]. (488). Grendzinski and Harris arrived pretty close to when the Chicago police left, they may have been there when Flores was still there, Mihaljevich was not sure, but they were after Renaud. (488). Grendzinski and Harris arrived about an hour after the incident, around 10:45 or 11:00 a.m. (489). Mihaljevich did not recall how long after that the DII agents, Gibson and Jones, arrived. (489).

On March 24, 2014, Mihaljevich was placed on restricted duty. (486, 489). On restricted duty, Mihaljevich was no longer permitted to work in the field with his towing vendors. (489). He could not execute his job as far as identifying vehicles on his own and he could not interact with his vendors. (489). Mihaljevich was no longer permitted to participate in overtime; his hours changed and were regulated. (489). Drive times were different from when he worked in the field, and then he was assigned to a location in Des Plaines. (489). Mihaljevich has been on restricted duty for two years since the date of the occurrence and he does not have any reason why it was delayed so much. (489-490).

DII attempted to interview Monica on two separate occasions. (490). Mihaljevich thought that the first time was in the end of July 2014. (490). DII came to Mihaljevich's house twice and

he did not recall the order. (490). One time they came to the house, he thought it was the first time, he was out back and DII asked to speak to Monica and he told them Monica was unavailable. (490). She was unavailable because she was in the shower. (490-491). Mihaljevich had let the dog out and Jones and Gipson walked up to him and were asking questions about Monica. (491). Before Mihaljevich responded to their questions, he contacted counsel directly and was advised that as soon as Monica got out of the shower she should speak with DII. (491). Monica did so. (491). Monica came down and spoke with DII in the backyard and she told them, while DII was tape-recording, that she did not want any involvement in the case. (491).

The next time DII came, Mihaljevich was home, either on a day off or an injury code and DII came to the front door and insisted upon speaking to Monica. (492). Mihaljevich told them that she already declined comment. (492). This occurred in the beginning of September 2014. (492). DII came to the front door and Mihaljevich told them that Monica already stated that she had nothing to say and she did not wish to be part of the process and they insisted. (492-493). DII told Mihaljevich that he was prohibiting his wife from talking and that he was holding her back and would not let Monica interact with them. (493). Mihaljevich contacted counsel and placed counsel on speakerphone while DII was at the front door. (493). Monica came to the door and with her own initiative stated again that she never wanted to, did not want to, and at no time in the future wanted to participate in the process. (493). DII eventually left after they made a couple more comments and tried to coerce Monica outside to talk. (493). Monica never received a subpoena from the Department lawyers in this case to testify. (493).

Mihaljevich had telephone conversations with Eigenbauer later on March 24, 2014. (493-494). The call was later in the evening. (494). Before Eigenbauer called, about an hour and a half or two hours before, Mihaljevich's boss, Angelo Mollo, came to his house and put him on restricted duty. (494). At that time, Mollo gathered all of Mihaljevich's equipment, his side arm, his rifle, all other working equipment, uniform, boots, coats, and stripped Mihaljevich of all the



equipment. (494). Eigenbauer observed that and saw Mihaljevich's equipment going out the door. (494). Eigenbauer called to see how Mihaljevich was doing and if there were any words of comfort and how he was holding up. (494). Mihaljevich was stripped of his stars, his guns, and was embarrassed by what he suffered and the damage that was caused to his marriage and family; it was an emotional, traumatic day. (495). Eigenbauer called late in the evening, after 10:00 p.m. (495). They talked for about a half hour or forty minutes. (495). Mollo arrived to get Mihaljevich's equipment between 7:30 and 9:00 p.m. (495).

Between noon and 9:00 p.m., Mihaljevich had contact with Lieutenant Grendzinski, Lieutenant Harris, and Eigenbauer because they were all at his house past noon. (496). They left shortly after Mihaljevich's daughter walked in the door from school, which gets out at approximately 2:30 p.m. (496). Neither Harris, Grendzinski, nor the DII agents mentioned that somebody would be coming to get Mihaljevich's equipment and place him on restricted duty. (496). Mihaljevich received a phone call in the afternoon telling him somebody would be coming to get his equipment. (496).

Mihaljevich apologized to Flores. (496). He apologized because he was embarrassed and he apologized for the fact that [Chicago police officers] had to come to his house and handle a situation that should have never materialized. (496-497). It was embarrassing and Mihaljevich felt bad that they had to come. (497). Mihaljevich apologized for causing the inconvenience of Chicago police officers rushing to his house. (497). He was sorry to get the adrenaline going for a situation that in hindsight could have been conducted in a better manner, through better alternatives. (497).

Mihaljevich has had a chance to review the Merit Board complaint in this case and he heard the testimony of Colonel Simental and the reasons for why the board believes he violated certain counts of the complaint. (498). Count I alleges that Mihaljevich violated state law and committed an aggravated unlawful restraint. (498). Mihaljevich disagreed completely with that

count due to the fact that there was an individual in his house that took it upon himself to enter the house, disrobe, and, at the time when Mihaljevich confronted him, wasn't able to provide identification to who he was or why he was in Mihaljevich's house. (498). Mihaljevich believed it was a reasonable action to approach him with his handgun at his side and ultimately handcuff him because he did not know who the individual was, if he was armed, or what his intent was, if it was to cause bodily harm or if it was a burglary. (499). Per policy, not knowing what the individual has, Mihaljevich had every right as a safety measure. (499).

Count II alleges a false accusation of a misdemeanor. (499). Mihaljevich does not believe that he did that, and he was not sure what the accusation was. (499). There were no false allegations because Eigenbauer pursued those. (500). Mihaljevich did not know the identity of the intruder, at which time he wanted to prosecute until it was determined who he was. (500). All the information Mihaljevich provided to CPD was factual and he was cooperative. (500).

Count III alleges that Mihaljevich failed to truthfully answer questions in his administrative interview on March 5, 2015 and alleges that he was untruthful on five separate occasions. (500). First, Mihaljevich was untruthful when he denied sending a text message from his wife's phone to Czub to come inside the residence through an unlocked front door and/or to undress. (500). Mihaljevich denied that because he never gave instructions or told Czub to come into his house, he did send a text. (500-501). The second time Mihaljevich was untruthful was when he denied telling Chicago police that he sent a text message from his wife's phone to Czub to come inside is residence through the unlocked front door and/or undress. (501). Mihaljevich disagreed because there were discrepancies from what Flores said and what Mihaljevich said. (501). The third time Mihaljevich was untruthful was when he denied leaving a note that instructed Czub to remove his clothing. (501-502). Mihaljevich stated that there was no note. (502). The fourth time Mihaljevich was untruthful was when he denied telling Chicago police that he observed Czub arrive at his residence in Czub's state-issued squad car. (502). Mihaljevich

never made that statement because he never saw Czub [arrive]. (502). Mihaljevich was in the basement doing laundry. (502). The basement has a block window facing south and Czub would have been parked northeast of Mihaljevich. (502). The block window was alley level, approximately six inches off the ground and you cannot see clearly out of it. (502). Mihaljevich saw Czub's vehicle when he stepped outside with Flores but he did not see it at any time before Czub entered the residence. (502-503). The fifth time Mihaljevich was untruthful was when he denied apologizing to Chicago police for calling 911 under false pretenses. (503). Mihaljevich did apologize for the inconvenience of them coming out, but it had nothing to do with false pretenses or in relation to 911. (503).

Count IV alleges that Mihaljevich used excessive force or more force than reasonably necessary when he drew his weapon, handcuffed, and detained Czub after Czub responded to Mihaljevich's written message to enter the residence through an unlocked door and undress. (503). There was no written message. (503). Mihaljevich's weapon was drawn but he gave Czub every opportunity to provide information of who he was but Czub had no identification. (503-504). Mihaljevich could not verify who he was and he took the steps for handcuffing and detainment until Chicago could verify [Czub's identity]. (504). In hindsight, Mihaljevich considered kicking Czub out the front door and leaving him naked in the neighborhood but he did not know who the individual was, if he was an offender or a repeat offender. (504). That was one of the reasons Mihaljevich and Eigenbauer decided to call 911. (504). Mihaljevich has a daughter who is sixteen years old and Czub could have easily been a predator going into his daughter's room. (504).

Count V alleges unlawful arrest or seizure and the rule of conduct states Officers will not make any arrest, search, or seizure that they know or should know is not in accordance with law and department procedures. (504-505). Mihaljevich did not believe that rule of conduct was applicable; his opinion differed from Simental about seizure. (505). Mihaljevich did not make an

arrest, search Czub, or commit a seizure on Czub on March 24, 2014. (505). To Mihaljevich, a seizure would be keeping car keys, keeping clothes, or keeping a cell phone. (505). He did not seize any of Czub's personal property. (505). Mihaljevich does not equate the term seizure in this rule of conduct with detaining Czub. (505-506).

Count VI alleges that Mihaljevich brought the Department into disrepute when he lured Czub into his residence. (506). Mihaljevich did not believe that he lured Czub, because he sent no message inviting Czub into his residence. (506). Czub initiated the situation by violating policies and the moral ethics involving himself with another person's family. (506). The Department also alleges that Mihaljevich brought it into disrepute when he detained Czub at gunpoint, handcuffed him, and called 911 when an emergency did not exist saying there was a naked man in his house. (506). Mihaljevich thought those were responsible actions taken, calling the agency for assistance to handle. (507).

Count VII alleges conduct unbecoming of an officer for the same allegations contained in count VI. (507). In hindsight, Mihaljevich thought there were better ways to handle the situation after dwelling on it for two years. (507). There were other alternatives, but he did not know who Czub was. (507). Mihaljevich could have called the state police, but he called CPD for rapid response because they are closer and state police only handles the highways. (507). Mihaljevich thought he made the correct decision calling Chicago for assistance. (507). If Mihaljevich had known Czub was a trooper at the time he received the text message on his wife's phone, he would have acted differently. (507-508). Mihaljevich would have taken [the message] to his supervisor and requested a meeting with the captain. (508).

Mihaljevich was aware that Czub received a five-day suspension. (508). Mihaljevich thinks that there is extreme disparate treatment. (508). Looking at precedent cases, the charges that Mihaljevich is charged with, not guilty of, involving a weapon and other similar circumstance, mirror some of the precedent cases. (508). Some of the precedents involving



weapons only received five-day suspensions. (508). Mihaljevich never had any criminal charges filed against him. (508-509). Mihaljevich was aware of cases where officers convicted of misdemeanors received substantially less penalties, in the range from thirty to ninety days. (509).

Mihaljevich thinks that there was disparate treatment in that Czub received a five-day suspension and they are seeking his termination. (509). Mihaljevich was at a loss for words when Czub only received a five-day suspension. (509). For LEADS violations alone Mihaljevich has seen troopers receive thirty to one hundred twenty days. (509). Czub's case was expedited and done quickly, while Mihaljevich has been on restricted duty the whole time. (509). Mihaljevich was affected by the loss of potential income because he was not allowed to work overtime. (509). Mihaljevich thinks disparate treatment started that day because, without any facts, and without anybody questioning him, his equipment was stripped, and Czub was allowed to go back to work that evening. (509-510). Mihaljevich does not have any reportable discipline in the last five years. (510).

Mihaljevich added that the counts he is charged with are inaccurate, being the unlawful use of a weapon and unlawful restraint. (510). Mihaljevich thought he handled [the situation] responsibly in the sense that those are the ways that he has been taught to handle as far as handcuffing and identifying people. (510). Mihaljevich thought he was responsible. (510). There was no physical interaction as far as an assault. (510). Mihaljevich made every effort to determine who the offender was and he felt, given the situation, he did a good job of navigating the process without a fateful outcome. (510-511). Mihaljevich does not believe any similar type of conduct is likely to occur in the future based upon the unique nature of this incident. (511).

On cross-examination, Mihaljevich dropped his wife off at school and she is a student studying English as a second language. (511-512). She started studying less than six months prior. (512). Mihaljevich did not identify himself as the person sending the message when he sent the message from his wife's phone. (512). Mihaljevich did not say anything in the message

about telling this person to cease communications with his wife. (512). Mihaljevich invited the person to his house in the message. (512). Mihaljevich expected a doorbell or a knock to announce that someone was there. (513). Mihaljevich did not say in the message to ring the doorbell or knock on the door because he did not think he had to instruct somebody on proper etiquette. (513).

Mihaljevich was downstairs doing laundry and he heard someone enter his residence. (513). Mihaljevich knew that friends and family have entered his residence before and he had no problem with them entering because they always announce themselves. (513-514). On March 24, 2014, someone came into Mihaljevich's house and they did not announce their presence. (514). Mihaljevich did not call 911 at that point. (514). Mihaljevich did not shout out for the person. (514). Mihaljevich waited until the person crossed the privacy barrier. (514). It took less than fifteen seconds and his dog was growling. (514). The person had enough time to get undressed before Mihaljevich approached. (514). When Mihaljevich called 911, he told them he had someone in custody. (515). Custody means that the person is not free to leave and they are detained. (515). DII asked Mihaljevich's wife to speak alone, without him present and she declined. (515).

When Mihaljevich saw a man in his house, the man was naked. (515). Mihaljevich could not tell that the man did not have a weapon on him because he did not know if there was a weapon the man was holding in front or if there was a weapon by his clothes. (516). Mihaljevich could not see the man's hands because the man was opening the door of his bedroom. (516). Mihaljevich told the man to freeze and at some point Mihaljevich saw his hands. (516). There was nothing in the man's hands. (516-517).

Prior to being downstairs doing laundry, Mihaljevich had texted a man to come to his house. (517). When a person showed up in his house, Mihaljevich would not assume that it was the man he invited to the house. (517). Mihaljevich would not assume anything because someone

does not walk into his house, it is not normal. (517). Family and people Mihaljevich knows walk in, but not strangers. (517). Mihaljevich was injured at the time, but he could walk up and down the stairs with his injury. (518).

On redirect-examination, Mihaljevich did not notice Czub's clothes because they were in a pile [on the floor]. (518). Mihaljevich saw Czub's clothes later and he was wearing a pair of boxers, sweatpants or pajamas like zumbas (phonetic), and a T-shirt. (518-519). Czub was wearing gym shoes with no socks. (519). Those are the kind of clothes that one could get out of quickly. (519).

In the one text message Mihaljevich sent to Czub, he did not tell him specifically what time to come over. (519). In the one text message that Mihaljevich received from Czub saying that he would be coming over, Czub did not indicate what time he would be there. (519-520). It was Mihaljevich's impression that he was going to come some time that day. (520). When someone entered his house at about 9:45 a.m., Mihaljevich did not believe that would have been Czub specifically based upon the messages sent back and forth. (520). The person could have come at any time during the day and Mihaljevich did not know when or if he was going to come. (520).

### **III. FINDINGS OF FACT**

#### **A. General Findings of Fact**

##### **Tpr. Mihaljevich Background**

Craig Mihaljevich has been an Illinois State Police Trooper for over 20 years. There was no testimony that he has ever been disciplined before. The Respondent submitted various employment evaluations received and they were admitted as Respondent Group Exhibit 6. Tpr. Mihaljevich received Meets or Exceeds Expectations in all dimensions for which he was rated. Additionally, several Master Sergeants and Lieutenants who had supervised him at various points in his career also testified favorably on his behalf. These supervisors had no negative

comments regarding his work performance and this testimony was not challenged at all by the Department.

#### Aggravated Unlawful Restraint

As in most Department Complaints, the same core set of facts give rise to multiple allegations of violating the Department Rules of Conduct. Accordingly, it is more efficient to deal with the facts first. Here, the Department alleges a fairly horrific set of actions taken by Tpr. Mihaljevich: chiefly that he intentionally lured Tpr. Czub over and into to his house, got him to completely undress, then confronted him with his loaded duty pistol, handcuffed him and kept him there against his will. The evidence and testimony adduced at this hearing did not bear those facts out.

There was no physical evidence presented at the hearing. We heard about what happened only through the recollections of two primary witnesses, Trps. Czub and Mihaljevich and two secondary witness, Sgt. Flores of the Chicago Police Department (CPD), and CPD Patrolman Eigenbauer. Trps. Czub and Mihaljevich's tales are basically similar but with several crucial differences. Tpr. Czub states that he was invited not only to Tpr. Mihaljevich's house, but that on succeeding text messages he was specifically directed to enter the house, locate a note on a chair and follow the directions on the note, which were to undress and proceed naked to the upstairs bedroom and enter. Czub testified that he had had sex with Tpr. Mihaljevich's wife in that house on at least one other occasion and was somewhat familiar with the layout of the house.

Tpr. Mihaljevich denies that there was any note or chair, he denies that he ever invited Tpr. Czub into his home and that he only intended to meet the person with whom his wife was having an affair on his door step whereupon he planned to admonish him to stay away from his family. Tpr. Mihaljevich stated that he was surprised by the sound of someone in his house above him as he was in his basement, put his duty belt on (he kept it in the basement) and proceeded upstairs, only to find a naked man with his hand on the door knob to his and his wife's



bedroom. Tpr. Mihaljevich ordered the man to freeze, kneel down and then handcuffed him, "for his safety and my safety." (34:20). Tpr. Mihaljevich stated that he did not know what to do at that point so he immediately called his next door neighbor, Ofc. Eigenbauer. Eigenbauer arrived within minutes and for all practical purposes assumed control of the scene. Eigenbauer briefly interviewed Tpr. Czub and determined that Tpr. Czub had no identification on him and instructed Tpr. Mihaljevich to call 911 and ask for a supervisor to come to the scene. Tpr. Mihaljevich complied with that request. Within a few minutes CPD patrol officers arrived followed by CPD Sgt. Flores.

In order to sustain the charge that Tpr. Mihaljevich committed Aggravated Unlawful Restraint, the Department has to prove that Tpr. Mihaljevich knowingly detained Tpr. Czub *without legal authority* while using a deadly weapon. The entire allegation rests upon the interpretation of whether Tpr. Mihaljevich's actions were those of an off-duty officer who confronted a naked man in his house and briefly detained him until the police arrived or whether as the Department alleges, he intentionally lured Tpr. Czub to his house presumably so he could have him arrested for criminal trespass.

There were several pieces of physical evidence available at the scene that would place this matter in a much stronger light if they had been retrieved and preserved. The actual text messages that went back and forth between Tpr. Mihaljevich's wife's (Monica's) cell phone and Tpr. Czub's cell phone would have confirmed or rebutted the allegation that Tpr. Mihaljevich instructed Tpr. Czub to enter the house and get undressed. Tpr. Czub testified that he promptly deleted the text messages and the messaging application on his phone as soon as Sgt. Flores instructed him to step outside and wait in his state-issued vehicle. DII's efforts to retrieve the messages on Tpr. Czub's phone were unsuccessful. DII never asked for nor retrieved Monica's phone on the day of the incident nor any day thereafter.

Tpr. Czub stated in the hearing and on the day of the incident to the DII Case Agent S/A

Jones and other police officers that he found the note affixed to a black swivel office chair that was located in the upstairs hallway leading to the back bedrooms. (124:20) Tpr. Czub is the only witness at the scene that day that can recall seeing a chair in the hallway. No explanation was provided as to whether such a chair even existed much less its whereabouts in the house.

Finally, the note which Tpr. Czub stated was affixed to the chair and which had further instructions for him would have provided total illumination of Tpr. Mihaljevich's actions and intentions that day. The note was never retrieved nor was there any explanation for its absence.

Having no physical evidence to review, we are left with the two conflicting accounts of Tpr. Czub and Tpr. Mihaljevich to evaluate. Tpr. Mihaljevich testified consistently throughout the multiple times he was questioned and cross-examined. However, there are multiple problems with the testimony that Tpr. Czub provided and with his recitation of the events. From the moment Tpr. Czub entered the house, Tpr. Mihaljevich was never alone for over five hours afterward. During that time, multiple Chicago Police officers, multiple ISP command officers from two ISP districts and several ISP DII agents were present in his house. Someone should have either noticed the chair and note or at least noticed Tpr. Mihaljevich removing the chair from the upstairs hallway. If Tpr. Mihaljevich had removed it (and the note) before even Ofc. Eigenbauer arrived, then Tpr. Czub would have noticed it as he was kneeling naked only a few yards from where he said the chair and note were. By Tpr. Czub's own testimony he states that he found the chair and the note in the upstairs hallway. He undressed and stated twice he put his clothes *on the chair in the hallway*. (124:10-24, 125:1-7). Tpr. Mihaljevich's testimony that he picked up Tpr. Czub's clothes, shoes and cell phone from the floor in the middle of the hallway and put them on a half-wall by the kitchen was unchallenged and is consistent where other officers reported seeing the clothes. The only mention of a note and a chair is solely from Tpr. Czub.

Next, Tpr. Czub's memory of where his wallet and badge were located was very poor. He

first testified that he had it with him and then did not fully recall whether he had it on him or not when he entered the house. (128:15 – 129:2). Given that he was repeatedly questioned by multiple police officers regarding his identity that day, it seems likely that he would have remembered at some point that he did not have his police identification on him. His overall testimony was peppered with uncertainty about the totality of the events that occurred that day and he twice offered by way of explanation for his lack of recall that he had tunnel vision. (153:9-17, 167:22 – 168:3). Additionally, he testified that he drove his marked ISP Tahoe while he was off-duty to a home to continue a sexual affair with woman he met on the Internet. He parked his Tahoe on the street and left the engine running with his canine in the vehicle. He further testified that at some point in the ongoing affair he became aware that the husband of the woman with whom he was having sex was also an ISP Trooper. He also testified, although the testimony was not entirely clear, that he received a 20 day suspension for improper use of LEADS information and for having sex while on duty. All told, the totality of Tpr. Czub's prior disciplinary history, his lack of clarity in his testimony at this hearing and his actions in this matter present a picture of someone who has significant boundary issues of which honesty may be chief amongst them.

Furthermore on the issue of Tpr. Czub's credibility, Tpr. Czub repeatedly referred to Ofc. Eigenbauer as "his friend," meaning that he had assumed, wrongfully, that Ofc. Eigenbauer was personal friends with Tpr. Mihaljevich. Ofc. Eigenbauer's testimony throughout the proceedings was completely credible and went unchallenged by either side. Once he was on scene, he acted professionally, and insisted that the Chicago Police Department be called given the extraordinary circumstances for which he was presented. He did not try to informally mediate the situation, opting instead to play it completely straight and notify the police. Unbeknownst to Tpr. Czub, Eigenbauer had merely exchanged phone numbers with Tpr. Mihaljevich as he testified he did with all his neighbors so they could watch out for each other. Neither he nor Tpr. Mihaljevich



had been inside each other residences, they had never socialized with each other and he characterized his relationship with Tpr. Mihaljevich as not friends, merely acquaintances.

This mischaracterization of Eigenbauer as a friend while describing the actions of Eigenbauer once he was on scene becomes very significant when Tpr. Czub stated, "So then they proceeded to come next to me, and then the owner of the house asked his friend should I dial 311 or 911? And then his friend says *if you want to make it look real, dial 911.*" (132:24 – 133:1-4). The strong implication there is that Eigenbauer, after spending less than two minutes on scene, decided to enter into a criminal conspiracy to frame Tpr. Czub for criminal trespass. That implication is absurd.

Finally, on the issue of whether Tpr. Mihaljevich committed Aggravated Unlawful Restraint, although it is not dispositive of the issue, it is nevertheless persuasive that Sgt. Flores and several other police officers opined that no crime had been committed, either by Tpr. Czub or Tpr. Mihaljevich. Additionally, the Department referred this case to the Cook County State's Attorney's Office (CCSAO) for possible criminal prosecution; however, the CCSAO declined to prosecute.

#### False Accusations of a Misdemeanor

In order to sustain a the charge that Tpr. Mihaljevich committed False Accusations of a Misdemeanor, the Department would have to prove that Tpr. Mihaljevich falsely accused Tpr. Czub of a crime. The apparent basis of this charge rests upon the unproven narrative that Tpr. Mihaljevich lured Tpr. Czub with the intention of having him arrested for criminal trespass all the while withholding crucial information from CPD, namely that he had sent text messages to Tpr. Czub inviting him to his residence. There are no credible facts to sustain that charge. First, there is no accusation of criminal conduct in the 911 call made by Tpr. Mihaljevich (42:20 – 44:21). Secondly, it was Ofc. Eigenbauer who insisted that 911 be called. Third, Sgt. Flores did not recall Tpr. Mihaljevich asking him to arrest Tpr. Czub and it would have been up to Sgt.



Flores to make that decision. (218:19 – 219:7). Fourth, Tpr. Mihaljevich readily admitted to Sgt Flores that he had sent text messages to Tpr. Czub. Tpr. Mihaljevich testified that he was initially thinking of prosecuting Tpr. Czub for criminal trespass until he learned that he was a Trooper. Both Tpr. Mihaljevich and Eigenbauer testified that they wanted CPD to make sense of the situation given that Tpr. Czub had no identification. In summary, all of the testimony presented corroborates the fact that the police were called to sort things out rather than to conspire to criminally prosecute Tpr. Czub.

#### Failure to Truthfully Answer Questions in an Administrative Interview

The basis of this charge is that Tpr. Mihaljevich lied when he gave five very specific answers during a DII interview as follows:

- (a) when he denied sending a text message from his wife's phone to a subject (Jason Czub) to come inside his residence through an unlocked door, and/or to undress;
- (b) when he denied telling the Chicago Police he sent a text message from his wife's phone to a subject (Jason Czub) to come inside his residence through an unlocked door, and/or to undress;
- (c) when he denied leaving a note which instructed the subject to remove his clothing;
- (d) when he denied telling the Chicago Police he observed Jason Czub arrive at his residence in Czub's state issued squad car; and,
- (e) when he denied apologizing to the Chicago Police for calling 911 under false pretenses.

Allegations (a) and (b) both depend on the premise that Tpr. Mihaljevich told Tpr. Czub in a text message(s) enter his residence and to undress. As was previously discussed above, Tpr. Mihaljevich denied ever telling Tpr. Czub to enter or undress and there is no credible evidence to rebut his denial.

Allegation (c) depends on the existence of a note, which was apparently never even searched for much less found and produced. Tpr. Mihaljevich consistently denied ever writing

any note and as was discussed above, there is no credible evidence to rebut his denial.

Allegation (d) depends on evidence that Tpr. Mihaljevich told someone that day that he saw Tpr. Czub arrive in his state-issued Tahoe. No witness testified to that effect. Additionally, Tpr. Czub stated that in the few minutes before Eigenbauer arrived he told Tpr. Mihaljevich, when trying to establish his identity as an ISP Trooper, to go look out the front window to see his state-issued Tahoe which Tpr. Mihaljevich did.

Allegation (e) depends on evidence that Tpr. Mihaljevich apologized to the Chicago Police for calling 911 *under false pretenses*. The under false pretenses concept is predicated upon the allegation that Tpr. Mihaljevich failed to tell any CPD officer that he had sent text messages inviting Tpr. Czub to his residence. As was stated above, it was conclusively established that Tpr. Mihaljevich advised CPD officers immediately that he had sent text messages to Tpr. Czub inviting him to his residence. Additionally, Tpr. Mihaljevich admitted that he apologized to Sgt Flores but explained that it was for inconveniencing him and the other officers as well as he was very embarrassed. (496:21 – 497:6). Sgt Flores' testimony completely corroborated that account. (220:2-11).

#### Use of Excessive Force

To sustain its burden in this charge, the Department would have to prove that Tpr. Mihaljevich used "more force...than is reasonably necessary under the circumstances." ROC-002 III.A.43. The only allegation of force in this hearing was that Tpr. Mihaljevich drew his weapon and pointed it briefly at Tpr. Czub prior to him being immediately handcuffed. Tpr. Mihaljevich stated that when he confronted Tpr. Czub, he had his service weapon at "low ready." (31:20 – 32:5). Tpr. Czub states that the gun was pointed at him. However, Tpr. Czub states that as soon as he was handcuffed and guided to the main floor of the residence, that Tpr. Mihaljevich had, "...my cell phone in one hand and his cell phone in the other hand" and proceeded to compare the text messages." Since Tpr. Mihaljevich did that while he had a

cellphone in each hand, presumably he did that while his service weapon was holstered. Accordingly, the act of initially pointing his service weapon either directly or at low ready at Tpr. Czub was a completely reasonable response from the perspective of Tpr. Mihaljevich, who thought he was confronting an intruder with no identification in his residence. Additionally neither Tpr. Czub nor any other police officer on the scene stated that they ever saw Tpr. Mihaljevich point his gun at Tpr. Czub for the remainder of the incident.

#### Unlawful Arrest or Seizure

The Department alleged that the act of detaining and handcuffing Tpr. Czub was not in accordance with law or Department procedures. The underlying basis of this charge is that it has to be viewed within the context of the narrative that holds Tpr. Mihaljevich invited Tpr. Czub into his residence and then asked him surreptitiously to get undressed. As has been stated above, that narrative was not proven. All that is left then is to view the events in the context of an officer confronting a naked man in his house, handcuffing him, immediately calling his CPD neighbor for help and then asking CPD to sort out what happened. In this light, it is clear that Tpr. Mihaljevich's actions were reasonable and in accordance with the law and Department procedures.

#### Bringing the Department into Disrepute

To sustain its burden in this charge, the Department would have to prove that Tpr. Mihaljevich engaged in conduct which brought the Department into disrepute. When viewing the totality of the events that transpired once Tpr. Mihaljevich sent his first surreptitious text message, it is clear that Tpr. Mihaljevich set in motion a chain of events that brought the Department into disrepute. The fact that Tpr. Mihaljevich never intended the entry into his house or even that calling CPD was not his idea, he cannot escape responsibility for what he started. Multiple CPD officers were present to witness an embarrassing series of events involving two off-duty ISP Troopers.

### Conduct Unbecoming an Officer

To sustain its burden in this charge, the Department would have to prove that Tpr. Mihaljevich engaged in conduct which discredited the integrity of the Department. The Department urged that the same totality of circumstances view be applied to this charge in the same manner as in the preceding count. For the reasons cited above in Count VI, the Department has proven that Tpr. Mihaljevich has discredited the integrity of the Department by involving multiple officers of the Chicago Police Department in the incident in house. However, this Hearing Officer notes that Bringing the Department into Disrepute and Conduct Unbecoming are virtually the same charge in that they require identical proofs and only differ semantically. The Department, however, assigns them different disciplinary levels, which may indicate that they see these charges as differing in degree of the offense, damage to the Department etc.

### **B. Specific Findings of Fact**

#### **COUNT I**

Count I of the Complaint against Craig Mihaljevich (Respondent) alleges that he violated Department Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states in pertinent part:

“Officers will uphold the Constitution of the United States and the state of Illinois, obey all federal, state, and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.”

**(1<sup>st</sup> Offense – If Felony Offense, Level 7 Misconduct: Up to Termination)**

The Complaint alleges that Respondent violated this Rule in that on or about March 24, 2014, he committed the offense of Aggravated Unlawful Restraint in violation of 720 ILCS 5/10-3.1(a), a Class 3 felony, when he invited Jason Czub to come to his residence under false pretenses, to enter through an unlocked front door and get undressed, then knowingly detained him without legal authority while using a deadly weapon in that he held Czub at gunpoint and handcuffed him.



## FINDING

As discussed in the General Findings, the Department failed to prove: the material content of the text messages back and forth between Tpr. Mihaljevich and Tpr. Czub, that Tpr. Mihaljevich invited Tpr. Czub into his residence or to get undressed, the existence of a note, and the underlying intention of Tpr. Mihaljevich to get Tpr. Czub arrested for criminal trespass.

This Hearing Officer specifically finds that Tpr. Mihaljevich did not commit the offense of Aggravated Unlawful Restraint, Tpr. Mihaljevich testified credibly and Tpr. Czub did not testify credibly.

## COUNT II

Count II of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.37., which states in pertinent part:

“Officers will not make false accusations of a felony, misdemeanor, traffic, petty offense or an administrative charge. Officers will not withhold information or testimony, if to do so would mislead judicial or administrative proceedings. Officers will testify truthfully when under oath. However, officers will not be required to waive any applicable constitutional rights.”

**(1<sup>st</sup> Offense – Level 7 Misconduct: Up to Termination)**

The Complaint alleges that Respondent violated this Rule in that on or about March 24, 2014, he made false accusations of a misdemeanor and withheld information from investigating officers when he told Chicago Police Officers he wanted to sign a criminal complaint against Jason Czub and have him arrested for breaking and entering (Criminal Trespass to a Residence).

## FINDING

The basis of this charge rests upon the Department’s narrative that Tpr. Mihaljevich lured Tpr. Czub with the intention of having him arrested for criminal trespass all the while withholding crucial information from CPD, namely that he had sent text messages to Tpr. Czub inviting him to his residence. No CPD police officer testified that any information was withheld and Tpr. Mihaljevich testified credibly that he only initially wanted Tpr. Czub arrested for criminal trespass and changed his mind after he found out that the naked man in his house was in

fact an ISP Trooper. CPD Sgt. Flores was never informed that Tpr. Mihaljevich wanted Tpr. Czub prosecuted and it was his decision whether or not to determine if a crime had been committed or if an arrest was to be made.

This Hearing Officer specifically finds that no crime (criminal trespass) had been committed, Ofc Eigenbauer made the decision to involve the Chicago Police Department, no material information was withheld by Tpr. Mihaljevich, and Tpr. Mihaljevich did not seek to have Tpr. Czub arrested or prosecuted.

### COUNT III

Count III of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.41.c., which states in pertinent part:

“Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer: ...

- c. is the subject of the investigation and has been advised of his/her statutory administrative proceedings rights if the allegation indicates that a recommendation for demotion, suspension or more than 15 days or discharge from the Department is probable.”

**(1<sup>st</sup> Offense – Level 7 Misconduct Up to Termination)**

The Complaint alleges that respondent violated this Rule in that on March 5, 2015, he failed to truthfully answer questions in a Department personnel investigation, when he was the subject of the investigation and was advised of his statutory administrative proceedings rights. Respondent was untruthful during his administrative interview when he made or or more of the following statements:

- (a) when he denied sending a text message from his wife’s phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;
- (b) when he denied telling Chicago Police he sent a text message from his wife’s phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;

- (c) when he denied leaving a note which instructed the subject (Jason Czub) to remove his clothing;
- (d) when he denied telling Chicago Police he observed Jason Czub arrive at his residence in Czub's state issued squad car; and/or
- (e) when he denied apologizing to Chicago Police for calling 911 under false pretenses.

### FINDING

As discussed in the General Findings, the determination that Tpr. Mihaljevich answered untruthfully to allegations (a), (b) and (c) depend on the existence of either a text message or a note drafted by Tpr. Mihaljevich which directed Tpr. Czub to undress. The Department failed to produce any credible conclusive evidence of the text messages or even provide an explanation of the whereabouts of the note or efforts made to recover it. Regarding allegation (d), no police officer stated that Tpr. Mihaljevich told him he observed Tpr. Czub arrive in his state- issued squad car. Similarly, no one corroborated allegation (e).

This Hearing Officer specifically finds that Tpr. Mihaljevich answered truthfully in his administrative interview.

### COUNT IV

Count IV of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.43., which states in pertinent part:

“Officers will not use more force in any situation than is reasonably necessary under the circumstances. Officers will use force in accordance with law and Department Procedures.”

**(1<sup>st</sup> Offense – Level 4 Misconduct: 31-45 Days)**

The Complaint alleges that Respondent violated this Rule in that on March 24, 2014, he used more force than reasonably necessary under the circumstances and the force used was not in accordance with law and Departmental procedures, when he drew his weapon, handcuffed and detained Jason Czub after Czub responded to Respondent's written message(s) to enter the

residence through an unlocked door and undress.

### FINDING

The only allegation of force in this hearing was that Tpr. Mihaljevich drew his weapon and pointed it briefly at Tpr. Czub prior to him being immediately handcuffed. As was discussed above, viewing the series of events when Tpr. Mihaljevich initially confronted a naked Tpr. Czub in the hallway leading to his and his wife's bedroom, Tpr. Mihaljevich's display of his service weapon was completely reasonable.

This Hearing Officer specifically finds that Tpr. Mihaljevich did not use more force than was reasonably necessary under the circumstances.

### COUNT V

Count V of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.44., which states in pertinent part:

"Officers will not make any arrest, search or seizure that they know or should know is not in accordance with law and Department procedures."  
**(1<sup>st</sup> Offense – Level 3 Misconduct: 15-30 Days)**

The Complaint alleges that Respondent violated this Rule in that on March 24, 2014, he made an arrest or seizure he knew or should have known was not in accordance with law and Department procedures when he detained Jason Czub.

### FINDING

The Department alleged that the act of detaining and handcuffing Tpr. Czub was not in accordance with law or Department procedures. As was discussed above, when viewed in the totality of circumstances the brief seizure and detention of Tpr. Czub by Tpr. Mihaljevich, it is clear that Tpr. Mihaljevich's actions were reasonable and in accordance with the law and Department procedures.

This Hearing Officer specifically finds that Tpr. Mihaljevich's seizure of Tpr. Czub was lawful and in accordance with Department procedures.



## COUNT VI

Count VI of the Complaint alleges a violation of Department Directive ROC-002,

Paragraph III.A.8., which states in pertinent part:

“Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.”  
**(1<sup>st</sup> Offense – Level 2 Misconduct: 4-10 Days)**

The Complaint alleges that Respondent violated this Rule in that on March 24, 2014 he failed to maintain a level of conduct in keeping with the highest standards of the law enforcement profession, and engaged in conduct that caused the Department to be brought into disrepute, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then, saying there was a naked man in custody in his house. Chicago Police Officers responded and Respondent attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.

## FINDING

Even though the Department failed to prove the allegations that Tpr. Mihaljevich called 911 when an emergency did not exist and that he attempted to have Tpr. Czub arrested after withholding critical information, when viewing the totality of the circumstances, it is clear that Tpr. Mihaljevich set in motion a series of events that not only threatened to spin out of control but ultimately ended with the assistance and involvement of multiple Chicago police officers.

This Hearing Officer specifically finds that Tpr. Mihaljevich, by sending surreptitious text messages to Tpr. Czub which caused him to come to his residence, brought the Department into significant disrepute.

## COUNT VII

Count VII of the Complaint alleges a violation of Department Directive ROC-002,

Paragraph III.A.7., which states in pertinent part:

“Officers will conduct themselves on and off duty in such a manner as to reflect favorable on the Department. Officers will not engage in conduct that discredits the integrity of the Department or its employees, or that impairs the operations of the Department. Such actions will constitute conduct unbecoming of an officer.”  
**(1<sup>st</sup> Offense – Level 1 Misconduct: Reprimand – 3 Days)**

The Complaint alleges that Respondent violated this Rule in that on March 24, 2014, he failed to conduct himself while off duty in such a manner as to reflect favorably on the Department and engaged in conduct that discredited the integrity of the Department, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, saying there was a naked man in custody in his house. Chicago Police Officers responded and Respondent attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.

#### **FINDING**

As was discussed above, this allegation overlaps entirely with the Count above and differs only semantically. The Department has proven that Tpr. Mihaljevich has discredited the integrity of the Department by involving multiple officers of the Chicago Police Department in the incident in house.

This hearing Officer specifically finds that Tpr. Mihaljevich's conduct was unbecoming an officer.

#### **IV. CONCLUSIONS OF LAW**

1. The Illinois State Police Merit Board has jurisdiction over the parties hereto and the subject matter of this case.
2. This matter is decided exclusively on the evidence admitted at the hearing held in this case.
3. The burden of proof in this case rests upon the Illinois State Police. The Illinois State Police are required to prove the allegations of the Complaint by a preponderance of the evidence (80 Ill. Adm. Code Ch. IV Secs. 150.665(f), 150.680(a)). By requiring proof of a matter

by preponderance of the evidence, the Illinois State Police are required to prove that the matters asserted are more probably true than not true (Illinois Pattern Jury Instructions, Civil, 21.01).

4. Regarding Count I of the Complaint, the Hearing Officer concludes that the Department has not proven a violation of ROC-002 Paragraph III.A.1. The Department failed to prove that Trooper Mihaljevich committed the offense of Aggravated Unlawful Restraint, a Class 3 felony.

5. Regarding Count II of the Complaint, the Hearing Officer concludes that the Department has not proven a violation of ROC-002 Paragraph III.A.37. The Department failed to prove that Trooper Mihaljevich made false accusations of a misdemeanor and withheld information from investigating officers.

6. Regarding Count III of the Complaint, the Hearing Officer concludes that the Department has not proven a violation of ROC-002 Paragraph III.A.41.c. The Department failed to prove that Trooper Mihaljevich was untruthful during his administrative interview.

7. Regarding Count IV of the Complaint, the Hearing Officer concludes that the Department has not proven a violation of ROC-002 Paragraph III.A.43. The Department failed to prove that Trooper Mihaljevich used more force than reasonably necessary. The Hearing Officer concludes that while there was force used between Trooper Mihaljevich and Trooper Czub, use of force was legally justified and therefore it was not more than reasonably necessary.

8. Regarding Count V of the Complaint, the Hearing Officer concludes that the Department has not proven a violation of ROC-002 Paragraph III.A.44. The Department failed to prove that Trooper Mihaljevich made an unlawful arrest or seizure. The Hearing Officer concludes that while there was an arrest or seizure, it was brief and lawful, and therefore it was not an unlawful arrest or seizure.

9. Regarding Count VI of the Complaint, the Hearing Officer concludes that the Department has proven a violation of ROC-002 Paragraph III.A.8. The Department proved that

Trooper Mihaljevich brought the Department into disrepute.

10. Regarding Count VII of the Complaint, the Hearing Officer concludes that the Department has proven a violation of ROC-002 Paragraph III.A.7. Trooper Mihaljevich's conduct, by involving multiple Chicago police officers, it impaired the integrity of the Department and constituted unbecoming of an officer.

#### **V. PENALTY CONSIDERATION**

This Hearing Officer recognizes that the determination of an appropriate discipline is left to the sound discretion and exclusive prerogative of the Merit Board and makes no recommendation herein. However, in an effort to provide some context for the Merit Board's imposition of discipline, the following items are noted.

The Department is seeking termination of Tpr. Mihaljevich's employment with the Illinois State Police.

Counsel for the Department makes the argument, as they do in every hearing, that since no two disciplinary matters are the same, past Department discipline should not be given much, if any weight. The Department also cites several cases that lend some credence to that proposition. However, in the opinion of this Hearing Officer, the best court-issued *general* guideline is found in *Siddiqui v Department of Professional Regulation*, 307 Ill. App. 3d 753, 764 (1999), "[while] a hearing officer may consider sanctions imposed in similar cases, each case must be considered on its merits and it is for the agency to determine the appropriate sanction in each case."

The majority of the arguments cited by Tpr. Mihaljevich and the corresponding rebuttals of the Department concern the conduct of officers whose actions consisted of misdemeanor criminal conduct or excessive force. Since the Department failed to prove the most serious of the charges alleging felonious behavior, excessive force and lying to the Department, discussion of the precedent cases for those violations is unwarranted and unhelpful.



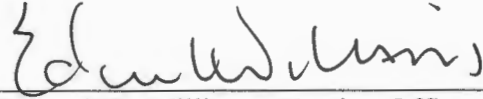
However, the Illinois Appellate court has issued *specific* guidelines that are directly applicable to the situation in this case wherein two different officers are sought to be disciplined for their conduct in the same incident. In *Wilson V. Bd. Of Fire & Police Com'rs*, 205 Ill. App.3d 984 (1990), the Court there considered the issue of two separate hearings which produced two separate, and ultimately disparate, sanctions. In *Wilson*, a sergeant and patrolman were involved in an oral and physical altercation. The Board gave the sergeant a thirty-day suspension and terminated the patrolman. The Court stated that neither of the Board's actions, if viewed separately, were inappropriate or arbitrary, however the Court believed because the events surrounding the two cases were completely related, there was a gross disparity or disproportionality between the two sanctions. *Wilson* at 992.

Additionally, in *Basketfield v. Daniel*, 71 Ill. App. 3d 877, 881 (1979), an officer and his commander were involved in the same incident which the court categorized only as a "tire recovery incident." As a result of the incident the commanding officer was demoted from Commander to Captain and suspended for 30 days while the Board sought a discharge of the officer. *Id.* The Court in sending the matter back to the Board stated, "on remand, police board should consider evidence as to discipline imposed on another member of the department who was involved in the same incident because it 'would be relevant and useful to the board in exercising its discretion and insuring consistency in disciplinary action.'" *Id.* at 881.

Accordingly, the Merit Board would be well within its discretion to consider the sanction the Department imposed upon Tpr. Czub since it arose from the same set of facts and circumstances. As is stated in Respondent Exhibit 1, Tpr. Czub received a 5 day suspension for his part in the incident. The stated reasons overlap with the charges pending against Tpr. Mihaljevich in that Tpr. Czub was disciplined for actions which Brought the Department into Disrepute, which the Department has also proven against Tpr. Mihaljevich. It should also be noted that Tpr. Mihaljevich was stripped of all his police powers and equipment since the day of

the incident in March 2014. He has been assigned to restricted duty in the District offices for these last 15 months.

Respectfully submitted this 7th day of July, 2016.

A handwritten signature in cursive script, appearing to read "Edward W. Williams", written in dark ink.

Edward W. Williams, Hearing Officer  
Illinois State Police Merit Board

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STATE OF ILLINOIS

ILLINOIS STATE POLICE MERIT BOARD

RECEIVED

MAY 18 2015

ILLINOIS STATE POLICE  
MERIT BOARD

IN THE MATTER OF:

TROOPER CRAIG MIHALJEVICH  
I.D. No. 4636

)  
)  
) Illinois State Police  
) Merit Board No. 15-06  
)  
)

COMPLAINT

NOW COMES Leo P. Schmitz, Director of the Illinois State Police, pursuant to  
20 ILCS 2610/14 and 80 Ill. Admin. Code § 150.575, and states as follows:

COUNT I

VIOLATION OF STATE LAW -

AGGRAVATED UNLAWFUL RESTRAINT

1. Craig Mihaljevich (Respondent) is employed as a State Police Officer by the Illinois State Police (Department). Respondent holds the rank of Trooper and at all times relevant to this Complaint was assigned to patrol duties in District Chicago. Respondent has been employed by the Department since November 29, 1995.
2. Respondent is married to Monica Escobar-Fernandez, and they reside at 6242 South Mason Avenue, Chicago, Illinois.
3. On March 24, 2014, at approximately 8:00 a.m. Respondent dropped his wife off

at her workplace. After doing so, without her knowledge, Respondent used his wife's cell phone to send one or more text messages to a male subject who had sent Escobar-Fernandez text messages of a sexual nature. The text message(s) Respondent sent pretended to be from Escobar-Fernandez, invited the male subject to the marital residence, indicated Respondent would not be at home, instructed the man to come into the residence through the front door which would be unlocked, follow the instructions and get undressed.

4. The man who texted Respondent's wife was Jason Czub. Unbeknownst to Respondent, Czub and Escobar-Fernandez had been having a sexual relationship for several months. Czub is also an Illinois State Police Officer, and works as a K-9 officer in District 15, the Illinois Tollway.
5. Czub acted upon the text messages he received and went to Respondent's residence while off-duty in his state-issued squad car, expecting to meet Escobar-Fernandez. Czub went to the front door and found it unlocked as the text messages indicated. He went inside and in the upstairs hallway near the bedrooms found a note on a chair which instructed him to get undressed and place his clothes on the chair. Czub did so.
6. Now naked, Czub looked in two bedrooms, both of which were empty. Czub turned around and observed Respondent at the base of the stairs wearing a duty belt and pointing a handgun at him. Respondent ordered Czub to put his hands on his head and get on his knees. Czub repeatedly yelled out that he was a state



trooper, and complied with Respondent's orders. As Czub was kneeling in the hallway while naked with his hands on his head, Respondent approached Czub with his gun drawn and advised Czub he was going to place him in handcuffs. Czub complied with Respondent's direction, and Respondent handcuffed Czub behind Czub's back.

7. Respondent retrieved Czub's cell phone from Czub's clothes on the chair, and compared the text messages on Czub's phone with those on his wife's phone.
8. Respondent then used his own cell phone to call his next door neighbor, Robert Eigenbauer. Eigenbauer is a Chicago police officer, and was off-duty. Eigenbauer came to Respondent's residence within minutes, and observed that Respondent had a naked man kneeling in the hallway while handcuffed. Eigenbauer questioned the man (Czub) as to his relationship with Escobar-Fernandez. Eigenbauer told Respondent to call 911.
9. Respondent called 911 to request assistance at 9:51 a.m., and reported he had a naked man in custody at his residence. Respondent identified himself as with the State Police, that another off-duty officer was present and the scene was secure.
10. Sergeant Gabriel Flores and Officer James McGovern of the Chicago Police Department responded at 9:53 a.m. to the dispatch of a naked man breaking and entering into the residence of a state police officer at 6242 South Mason Avenue. Two other Chicago police officers also arrived on scene. Upon arrival Sergeant

Flores and Officer McGovern observed that the owner of the residence (Respondent) was wearing a duty belt, and had a naked man in handcuffs inside the residence.

11. Sergeant Flores interviewed Respondent. Respondent advised he wanted the naked man arrested for breaking and entering into his residence, and that he wanted to sign complaints against the naked man.
12. Officer McGovern took the naked male subject into the living room for questioning, removed the handcuffs and allowed him to get dressed. The male subject identified himself as Jason Czub, an off-duty State Police trooper. Czub stated he was having an affair with the woman who resided at the residence, and came over after receiving text messages from her inviting him to come inside and enter through the front door, expecting to find her alone. Czub stated he entered the residence as invited, and observed a note instructing him to take off his clothes, and he undressed. Czub was then confronted by Respondent wearing his duty belt, who handcuffed him. Officer McGovern relayed Czub's statements to Sergeant Flores.
13. Sergeant Flores then questioned Respondent again, and specifically about Czub's statements. Respondent advised that morning he had taken his wife to the school where she worked, kept her cell phone and found sexually related text messages. After being confronted with Czub's statements, Respondent admitted he sent text messages on his wife's cell phone which instructed the subject to

come to the residence, let himself in through the unlocked front door, and to undress. Respondent also admitted he observed Czub arrive at the residence in Czub's squad car, and that he knew Czub was an officer before Czub entered the residence. Based upon the information provided to him Sergeant Flores decided not to make any arrests, and requested the Illinois State Police handle the matter administratively. Respondent apologized to Sergeant Flores for contacting the police under false pretenses.

14. On March 5, 2015, agents from the Department's Division of Internal Investigation (DII) conducted an administrative interview of Respondent in the presence of his attorney after giving Respondent notice of the allegations under investigation and his administrative rights. During his administrative interview, among other statements, Respondent stated as follows:

On the morning of March 24, 2014, he took his wife to work at 8:00 a.m. and she left her cell phone in his car; he heard her cell phone beep, looked in her phone and saw texts from another man; he texted back and asked the man to meet at his residence; he did not invite the man to come inside his residence or to get undressed; he left the front door to his residence unlocked that morning; he was in his basement doing laundry when he heard someone walking in the living area upstairs, put on his duty belt which contained his weapon, and went upstairs to discover a naked man in his upstairs hallway; he drew his weapon and ordered the man to freeze;

he placed the man in handcuffs for safety until he could identify the man; he did not arrest the man for any offense; the subject was not free to leave; he called his next door neighbor as he could respond quickly; he called 911 and told them there is a naked man in his house; he was interviewed by Chicago police and told them what happened; he did not know initially whether the naked subject was the same person he texted using his wife's phone, and may have asked the Chicago police to arrest the subject for breaking and entering; after he learned the subject was the person he texted and a state trooper, he advised Chicago police he did not want to press charges; he did not leave any kind of a note instructing the subject to get undressed; he did not tell Chicago police the texts he sent stated the front door would be unlocked, to come inside and get undressed; he did not tell Chicago police he left a note telling the person to undress; he did not tell Chicago police he saw Czub arrive at his house in Czub's squad car; he never saw Czub's squad car; and he did not apologize to Chicago police for calling 911 under false pretenses.

15. All or a portion of the facts set forth herein constitute Respondent's violation of Departmental Directive ROC-002, Rules of Conduct, Paragraph III.A.1., which states:

"Officers will uphold the Constitution of the United States and the state of Illinois, obey all federal, state, and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts



having jurisdiction.”

**(First Offense – If Felony Offense, Level 7 Misconduct: Up to Termination).**

Respondent violated this rule in that on or about March 24, 2014, he committed the offense of Aggravated Unlawful Restraint in violation of 720 ILCS 5/10-3.1 (a), a Class 3 felony, when he invited Jason Czub to come to his residence under false pretenses, to enter through an unlocked front door and get undressed, then knowingly detained him without legal authority while using a deadly weapon in that he held Czub at gunpoint and handcuffed him.

## **COUNT II**

### **FALSE ACCUSATIONS OF A MISDEMEANOR**

- 1.- 14. Paragraphs 1. through 14., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 14., inclusive, of Count II as if fully set out herein.
15. All or a portion of the facts set forth herein constitute Respondent’s violation of Department Directive ROC-002, Paragraphs III.A.37., which states:

“Officers will not make false accusations of a felony, misdemeanor, traffic, petty offense or an administrative charge. Officers will not withhold information or testimony, if to do so would mislead judicial or administrative proceedings. Officers will testify truthfully when under oath.

However, officers will not be required to waive any applicable constitutional rights.”

**(First Offense – Level 7 Misconduct: Up to Termination).**

Respondent violated this rule in that on or about March 24, 2014, he made false accusations of a misdemeanor and withheld information from investigating officers when he told Chicago Police Officers he wanted to sign a criminal complaint against Jason Czub and have him arrested for breaking and entering (Criminal Trespass to a Residence).

**COUNT III**

**FAILURE TO TRUTHFULLY ANSWER QUESTIONS**

**IN AN ADMINISTRATIVE INTERVIEW**

- 1.- 14. Paragraphs 1. through 14., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 14., inclusive, of Count III as if fully set out herein.
15. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.41.c., which states:

“Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer: ...

  - c. is the subject of the investigation and has been advised of his/her

statutory administrative proceedings rights if the allegation indicates that a recommendation for demotion, suspension or more than 15 days or discharge from the Department is probable.”

**(First Offense – Level 7 Misconduct: Up to Termination).**

Respondent violated this rule in that on March 5, 2015, he failed to truthfully answer questions in a Department personnel investigation, when he was the subject of the investigation and was advised of his statutory administrative proceedings rights. Respondent was untruthful during his administrative interview when he made one or more of the following statements:

- (a) when he denied sending a text message from his wife’s phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;
- (b) when he denied telling Chicago Police he sent a text message from his wife’s phone to a subject (Jason Czub) to come inside his residence through the unlocked front door, and/or to undress;
- (c) when he denied leaving a note which instructed the subject (Jason Czub) to remove his clothing;
- (d) when he denied telling Chicago Police he observed Jason Czub arrive at his residence in Czub’s state issued squad car; and/or
- (e) when he denied apologizing to Chicago Police for calling 911 under false pretenses.

## COUNT IV

### USE OF EXCESSIVE FORCE

1.- 14. Paragraphs 1. through 14., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 14., inclusive, of Count IV as if fully set out herein.

15. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.43., which states:

"Officers will not use more force in any situation than is reasonably necessary under the circumstances. Officers will use force in accordance with law and Department procedures."

**(First Offense – Level 4 Misconduct: 31-45 Days).**

Respondent violated this rule in that on March 24, 2014, he used more force than reasonably necessary under the circumstances and the force used was not in accordance with law and Departmental procedures, when he drew his weapon, handcuffed and detained Jason Czub after Czub responded to Respondent's written message(s) to enter the residence through an unlocked door and undress.



## COUNT V

### UNLAWFUL ARREST OR SEIZURE

1.- 14. Paragraphs 1. through 14., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 14., inclusive, of Count V as if fully set out herein.

15. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.44., which states:

"Officers will not make any arrest, search or seizure that they know or should know is not in accordance with law and Department procedures."

**(First Offense – Level 3 Misconduct: 15 - 30 Days).**

Respondent violated this rule in that on March 24, 2014, he made an arrest or seizure he knew or should have known was not in accordance with law and Department procedures, when he detained Jason Czub.

## COUNT VI

### BRINGING THE DEPARTMENT INTO DISREPUTE

1.- 14. Paragraphs 1. through 14., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 14., inclusive, of Count VI as if fully set out herein.

15. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.8., which states:

“Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.”

**(First Offense – Level 2 Misconduct: 4 to 10 Days).**

Respondent violated this rule in that on March 24, 2014, he failed to maintain a level of conduct in keeping with the highest standards of the law enforcement profession, and engaged in conduct that caused the Department to be brought into disrepute, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, saying there was a naked man in custody in his house. Chicago Police Officers responded and Respondent attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.

## **COUNT VII**

### **CONDUCT UNBECOMING AN OFFICER**

- 1.- 14. Paragraphs 1. through 14., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 14., inclusive, of Count VII as if fully set out herein.
15. All or a portion of the facts set forth herein constitute Respondent's violation of

Department Directive ROC-002, Paragraphs III.A.7., which states:

“Officers will conduct themselves on and off duty in such a manner as to reflect favorably on the Department. Officers will not engage in conduct that discredits the integrity of the Department or its employees, or that impairs the operations of the Department. Such actions will constitute conduct unbecoming an officer.”

**(First Offense – Level 1 Misconduct: Reprimand – 3 Days).**

Respondent violated this rule in that on March 24, 2014, he failed to conduct himself while off duty in such a manner as to reflect favorably on the Department, and engaged in conduct that discredited the integrity of the Department, when he lured Jason Czub into his residence, detained Czub at gunpoint, handcuffed Czub, then called 911 when an emergency did not exist, saying there was a naked man in custody in his house. Chicago Police Officers responded and Respondent attempted to have Czub arrested for breaking and entering, however he later admitted he lured Czub into his residence.

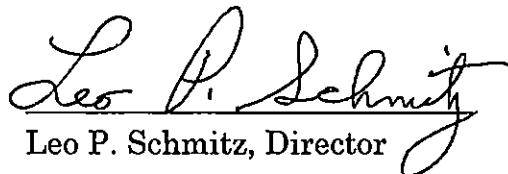
### **CERTIFICATION**

A copy of Illinois State Police Department Directive ROC-002, Rules of Conduct, is provided in the incorporated attachment and is certified by the Director as accurate, complete, and in full force and effect at the time the aforementioned acts were committed.

**CONCLUSION**

**WHEREFORE**, by reason of these facts and charges, I request the Illinois State Police Merit Board conduct a hearing in this matter and terminate Respondent from employment with the Illinois State Police.

Respectfully submitted,

  
Leo P. Schmitz, Director

Leo P. Schmitz, Director  
Illinois State Police  
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